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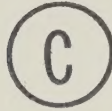
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THE HUDSON'S BAY COMPANY AS A POLITICAL INSTITUTION

by



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A THESIS

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ABSTRACT

In this thesis the Hudson's Bay Company as a political institution (as distinct from its operation as a commercial entity) is analyzed. Three questions are asked: 1) what was the basis of the H.B.C.'s political power; 2) what were the methods of exercising that power; and, 3) what was the reason for exercising political power. The focus is on Red River Colony from the time of its inception in 1811 to the mid-1850's.

The three questions are answered by examining the following aspects of the company's political history: first, the 1670 Charter; secondly, six policy decisions made by the London authority—1) the Retrenching Plan of 1809; 2) the establishment of Red River in 1811; 3) the Court General Resolutions of 1815; 4) union with the Northwest Company in 1821; 5) Council of Assiniboia Resolutions of 1835; and 6) the 1839 Court General Resolutions; thirdly, the free trade movement in Red River; and finally, the demise of the H.B.C. as a political institution.

It is concluded that the H.B.C. was indeed a political institution of great importance. The basis for the exercise of political power was the 1670 Charter, the economic advantages enjoyed by the company beyond those accruing to it because of the Charter and succeeding legislation, and the political advantages the company had in Great Britain.

Essentially, the method of exercising political power was by directives from the London authority through a formal political structure established and maintained by that authority. This method of exercising power was bolstered by the company's right and ability to punish those who disobeyed its laws. The government of the H.B.C. was centralized,

non-representative, and non-responsible.

The reason for the exercise of political power by the company was the maintenance of monopoly control and accompanying commercial gain. The place of the H.B.C. in Western Canadian political history prior to 1867 is discussed.

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CHAPTER I

INTRODUCTION

In the sources on Canadian political history there is little which analyzes the Hudson's Bay Company as a political institution. Through the works of Harold Innis,¹ E. E. Rich,² A. S. Morton,³ W. L. Morton,⁴ Kenneth McNaught,⁵ Douglas MacKay,⁶ Alexander Ross,⁷ Robert Pinkerton,⁸ George Bryce,⁹ Sir W. Schooling,¹⁰ and Chester Martin¹¹ (i.e., the roster

¹Harold A. Innis, The Fur Trade in Canada (Toronto: University of Toronto Press, 1967); and Essays in Canadian Economic History (Toronto: University of Toronto Press, 1956).

²E. E. Rich, The History of the Hudson's Bay Company 1670-1870, Vols. I and II (London: The Hudson's Bay Record Society, 1958 and 1959); and The Fur Trade and the Northwest to 1857 (Toronto: McClelland and Stewart, 1967).

³A. S. Morton, "The Business Methods and the Archives of the Hudson's Bay Company," Canadian Historical Association Report of the Annual Meeting (May, 1938), pp. 134-144.

⁴W. L. Morton, Manitoba: A History (Toronto: University of Toronto Press, 1967); and The Critical Years: The Union of British North America 1857-1873 (Toronto: McClelland and Stewart, 1964).

⁵Kenneth McNaught, The Pelican History of Canada (London: Penguin Books, 1969).

⁶Douglas MacKay, The Honourable Company (Toronto: McClelland and Stewart, 1936).

⁷Alexander Ross, The Red River Settlement: Its Rise, Progress and Present State (Minneapolis: Ross and Haines, 1957).

⁸Robert Pinkerton, The Gentlemen Adventurers (Toronto: McClelland and Stewart, 1931).

⁹George Bryce, Mackenzie Selkirk Simpson, Vol. V: The Makers of Canada (Toronto: Morang and Co. Ltd., 1911).

¹⁰W. Schooling, The Governor and Company of Adventurers of England Trading into Hudson's Bay During Two Hundred and Fifty Years (London: The Hudson's Bay Company, 1929).

¹¹Chester Martin, Lord Selkirk's Work in Canada, Vol. VII: Oxford Historical and Literary Studies (Oxford: Clarendon Press, 1916).

of writers who have written substantially on the H.B.C.) the focus is on the development of the H.B.C. as a commercial institution.¹² While none doubt the fact that the company had as well a political role to play, at the same time none analyze this role as a feature in itself. In terms of this discussion a political institution is considered to be one which has the following characteristics: the authority and ability to constitute laws, to carry out those laws, and to punish those who do not obey its laws.

What power the H.B.C. had precisely, how this power was exercised, and toward what ends it was exercised are questions which deserve a careful and coherent analysis—one which has not yet been undertaken. This thesis is directed toward this end in the expectation that the H.B.C. will be found to be a political institution.

First, this includes an analysis of the 1670 Charter, the founding document, of the company. The powers granted in this document by the British Crown were varied and far-reaching, ranging from land and

Two authors have attempted at least a partial political analysis of the H.B.C. The first was limited by lack of information due to vagueness and hesitancy by the company to divulge pertinent information. This work was: D. Gunn, History of Manitoba from the Earliest Settlement to 1835 (Ottawa: McLean, Roger and Co., 1880). The second was concerned with Canadian-American relations primarily and therefore analyzed the political actions of the company only in that one area. This work was: Alvin D. Gluek, Minnesota and the Manifest Destiny of the Canadian Northwest: A Study in Canadian-American Relations (Toronto: University of Toronto Press, 1965).

¹²It is typical for instance for writers to refer to the H.B.C. in such all encompassing nouns as "a commercial enterprise" (McKay, Honourable Company, p. 40); or "marketing organization" (Innis, Essays, p. 283).

Moreover, one never finds in the indexes of works on the H.B.C. references to "politics, "political organization", "powers", etc.

mineral rights to the power to declare and wage war.*

Second, analysis of the H.B.C. as a political institution must include an analysis of the actual exercise of political power by the company. This includes investigating the working relationship between the H.B.C. authority on the one hand and employees and non-employees under the company's hegemony on the other, and elaborating the political structure required by the company to exercise this power.

The focus is on the H.B.C. in Red River Colony from 1809 to the early 1850's—more specifically, on six policy decisions made by the company from 1809 to 1839. Attention will also be paid to an analysis of the free trade movement in the 1820's through the 1850's in terms of the exercise of political power by the company.

The H.B.C. as a political institution in the Colony of Red River was chosen as the subject of extensive analysis because, in terms of methodology, it constitutes a manageable and well defined area of analysis. In terms of the exercise of political power by the H.B.C., Red River Colony was the most Europeanized, the most complex community organization, and heaviest population of whitemen within the area administered by the company. It was the first major settlement in Rupert's Land—it necessitated the formation of some kind of formal political structure by the H.B.C.

*The extent of the powers granted in the Charter were not surprising given the policies of imperial Britain. It was not unusual for the Crown to grant extensive powers to a private company which would assume responsibility for the administration of a colonial area. The acquisition and maintenance of colonies was part of the mercantile policies of Great Britain. Colonial areas over which British companies such as the H.B.C. had monopoly control provided cheap raw materials for the mother country. To insure the continuous supply of these resources the Crown granted far-reaching powers to private companies in the interests of the British empire. Such colonies also served as markets for manufactured goods.

Chapter II examines in detail the powers granted to the H.B.C. by Charles II of England. These are contained in the 1670 Charter of the company. An understanding of the varied and extensive rights, privileges, and duties of the company is essential to the discussion because the company consistently and frequently referred to the Charter as the basis for its exercise of political power. In essence, the 1670 Charter was the constitution of the company as a political institution. The powers granted by Charles II affected all aspects of life under company hegemony; and provided the company with a mandate to constitute and execute laws within the granted territory. Furthermore, the H.B.C. had the right to punish those individuals who did not abide by the constitution and the legislation of the company.

Chapter III examines the actual exercise of political power by the H.B.C. in Red River Colony and the political structure required by the company to exercise this power. The vehicle of examination is an analysis of six major policy decisions by the company.

Briefly, in chronological order, the six major policy decisions were:

- 1) the Retrenching Plan of 1809, which re-affirmed the company's commitment to the fur trade at a time when it was considering entering the then more lucrative timber trade;

- 2) the establishment in 1811 of Red River with the accompanying structure of government;

- 3) the Court General Resolutions of May 19, 1815, which established new positions in the decision-making hierarchy with a view to strengthening the line of authority;

- 4) the union of the Northwest Company in 1821 after a bitter and

costly fur war that almost brought both companies to the brink of bankruptcy, and the resulting government structure;

5) the resolutions of the Governor and Council of Assiniboia of 1835 which were passed after the company purchased back the Selkirk grant and which instituted a new administrative structure that appeared to be less centralized; and,

6) the appointment of a recorder in 1839 which appeared to demonstrate the company's willingness to separate the judicial functions from the legislative.

These policy decisions will be examined and analyzed chiefly in terms of their effect upon employee and non-employee residents of Red River. To understand the exercise of political power vis-à-vis non-employees in particular it is useful to examine the free trade movement. The point here is not to trace the development of the movement itself, but rather to illustrate the means and extent of political power employed by the company in relation to non-employees.

From its inception to the time of Sir George Simpson (Governor-in-Chief of Rupert's Land from 1821 to 1856), the company maintained that its mandate for governing did not include non-employees. During this time there were individual officers of the company (e.g., Lord Selkirk) who insisted otherwise, but the official stance of the company was that non-employees did not fall under its hegemony. This changed with the growth of the free trade movement which began in the early 1820's.

The purpose then of this discussion is to analyze the H.B.C. as a political institution. First of all this entails an examination of the basis of the political powers of the company. The methods of government that were employed and the decisions made by the company in Red River

stem in large part from the company's conception of its purpose and powers as outlined, either explicitly or implicitly, in the Charter of 1670. It is central to this discussion to understand the degree and nature of political power of the H.B.C. as granted to it by the Crown of England.

Second, the analysis also entails an examination of how the company carried out the functions of government—the executive, legislative, and judicial functions. What were the formal structures through which the Red River settlement was governed, and who was affected by the decisions carried out through these structures. Was the formal structure representative and/or responsible. Finally, did the company centralize or decentralize its political power throughout its first fifty years of governing Red River.

Third, the question of the purpose of the government of the settlement will be considered. Red River Colony will be examined in terms of the question of whether the colony was an independent political entity and/or an appendage of the H.B.C.

In summary, the thesis will examine three main aspects of the H.B.C. as a political institution: 1) the basis of the political power of the company; 2) the methods of exercising that power; and 3) the reasons for exercising that power.

CHAPTER II

THE 1670 CHARTER OF THE HUDSON'S BAY COMPANY

The founding document of the H.B.C. was a Charter granted on May 2, 1670, by the Crown of England. It was in essence the constitution of the H.B.C. as a political institution—it was a document enunciating governing powers. Awarded by Charles II in acknowledgement of past favours to his cousin, Prince Rupert, and seventeen other courtiers, the Charter bestowed varied powers to the new company.

However, a loosely operating trade entity had been formulated four years previously. The nucleus of the group, the courtiers who would in 1670 be granted the Charter, worked closely, initially at least, with two voyageurs, Groseilliers and Radisson. These two individuals provided the necessary knowledge of the geographical conditions of North America (as known by 1666) and, more importantly, the fur resources of the area.

Frustrated by their attempts to gain financial backing from France, and after the failure of a sea voyage financed by businessmen from Boston, Groseilliers and Radisson were encouraged by Commissioners of the British monarch to offer to the King of England their idea of a sea approach to the furs of the north. In 1666 Groseilliers and Radisson won support for their idea from the King and his court.

The courtiers to whom the two French-Canadians appealed were primarily concerned with the problems of setting up a balanced imperial economy. And the possibility of integrating the northern reaches of North America into the economy, along with the possibility of a northern passage to the Pacific, appealed to them. Therefore, they were more than willing to listen to, and supply modest support to, Groseilliers and Radisson.

First among equals of the small group of courtiers stood Anthony Ashley Cooper (later to become the first Earl of Shaftesbury). This group had already been granted a charter for South Virginia (later to be the Carolina colony) and in 1670 it was to be granted the charter for the development of the Bahamas, and other areas in the West Indies. Members of the group were active on such bodies as the Council of Plantations, Council of Trade and a standing committee for plantations.

So Groseilliers and Radisson appealed to an informal, but coherent group of men who had very definite visions about the economic status of the empire. In addition, they were assured of the patronage of James, Duke of York, and Prince Rupert, who were more concerned with affairs of state, but who nevertheless lent prestige and support to the concept of a sea approach to the furs of the north through Hudson's Bay.

Despite this support, the two French-Canadians were forced to wait. In 1667 serious preparations for a voyage were abandoned because summer with its good sailing conditions was over before the ship was made ready to sail. The significance of the 1667 preparations was that a royal charter granted exclusive trade rights to the group. This grant has never been found although there are references to it.¹ Such grants were common at that time when incentives were needed to encourage exploration and broaden colonial trade.

Even though no voyage had yet been made, the informal group continued to solicit financial backing and as a consequence, it became more closely organized. In addition, its composition changed as it began to gain the support of financiers. Not only were those financiers who

¹E. E. Rich, The History of the Hudson's Bay Company, 1670-1870 (London: The Hudson's Bay Record Society, 1959), I, 31 and 40.

handled public funds interested, but so were the large private banking interests. Instrumental in the involvement of these banking interests was James Hayes, private secretary to Prince Rupert and an expert in financial matters. He was an influential member of the group until he sold the last of his stock in 1688.

Even though the group now included prominent courtiers and bankers, the actual sums of money invested in the adventure were nominal. They varied from twenty pounds to two hundred pounds, and coming as they did from very wealthy individuals they were very small contributions to an experiment of high risk. Thus, through a joint-stock arrangement the wealthy were able to try various experiments with no real risks to their financial status.

The history of the company was to be characterized by conservative financing practices where the investors contributed small amounts of money at a time, although some individuals did, over a period of years, contribute a total of several hundred pounds. By the same token, they were satisfied with non-spectacular returns as long as these were reasonably steady. During its early years the company was forced to request loans at various times so that it could balance the budget. But again, these loans were small and of a personal nature and were generally repaid when the next ship docked with its furs from America.

Finally, in June of 1668, after a ten year wait by Groseilliers and Radisson since the conception of their idea of a sea route, their patrons were prepared to produce the voyage of the Eaglet and the Nonsuch. The former was forced to return to London by bad weather, but the Nonsuch continued, and returned, after wintering in Hudson's Bay, with a cargo of prime furs which more than paid for the aborted 1667 attempt and the

expenses incurred by itself and the Eaglet.

Even before its return, the group in London was thinking in long-range terms and was moving from the idea of scattered personal support for each voyage to a more permanent, formal organization for the financing of trade. The group again was given, as it had been in 1667, a royal grant (which would be renewed again after the arrival of the Nonsuch) of sole trade rights in the northern area of America. This served to strengthen the legal position of the group.

The successful return of the Nonsuch, and the ongoing process of stabilizing and formalizing the group from a legal as well as an economic perspective culminated in the issuance of the Charter under the Great Seal of England on May 2, 1670. The group, according to the Charter was to be "one Body Corporate and Politique, in Deed and in Name [and was to be known as] The Governor and Company of Adventurers of England, trading into Hudson's Bay...."²

The Charter gave sweeping powers to the group of Adventurers. As the grants to sole trade in 1667 and again in 1669 (June 23 and October 21) were standard practices of the day, the broad powers of the Charter were also in keeping with the practice of the day. Whether or not these arrangements were good or bad is not within the scope of this discussion, but the Hudson's Bay Company, as it was to be called, operated under the powerful and diverse powers granted in the Charter of 1670 for almost two centuries: as shall be discussed, these powers were interpreted

²Archer Martin, The Hudson's Bay Company's Land Tenures and the Occupation of Assiniboia (London: William Clowes and Sons, Ltd., 1898), p. 164. Appendix A, pp. 163-172 of the book contains the entire 1670 Charter. All future footnote references to the Charter are to this particular copy of the Charter and will be noted by: Charter, page.

differently both by people within the company and by outsiders.

* * * * *

It is useful at this point in the discussion to divide the powers granted by the Charter into two parts: those concerning the internal organization of the company, and those concerning the external social, economic and political aspects of its operation.

The Governor and Company of Adventurers consisted of eighteen individuals including as Governor, the cousin of the King, Prince Rupert.³ The Charter named the eighteen but there was no limits placed on the number of Adventurers by it. Although the number of shareholders⁴ was to increase appreciably through the years, the control of the company remained, until its sale to the International Finance Group in 1863, in the hands of a few prominent families.⁵

The Charter provided a skeletal outline for the internal organization of the new corporation. There were of course various refinements

³Prince Rupert was re-elected annually as Governor until his death in 1683 at which time James, Duke of York, replaced him. James held this position until his accession to the throne as James II, two years later. He had held a share of the company since 1672 when the Committee presented him with "one equall Share with them in this joint Stocke and that credit bee given him [James] for three hundred poundes...." E. E. Rich ed., Minutes of the Hudson's Bay Company 1671-1674 (Toronto: The Champlain Society, 1946), VII, 35. Upon the abdication of James II in 1688 the Governor and Committee of the Hudson's Bay Company retained his share and presented it to his successor, King William III.

⁴Stock was never sold on the open market except for a brief period during the 1690's. Between 1676 and 1683 all accounts were recorded in Journals and from 1683 on all transfers and purchases of stock were recorded in the Stock Books. All transfers had to receive the approval of the Governor and Committee.

⁵John S. Galbraith, The Hudson's Bay Company as an Imperial Factor 1821-69 (Los Angeles: University of California Press, 1957), p. 14.

necessary (see the early Minutes of the company, especially between 1671 and 1674) which became obvious when problems unforeseen by the formulators of the Charter arose. These problems ranged from the question of position of a ship's captain vis-à-vis a company man, to the establishment of a position of secretary, to the wages paid various employees, to establishing a sub-committee on trade, to the best method (open auction or private sale) of disposing of the furs in England. By and large, these refinements and additions did not bring into question the power of the executive of the company. It simply became necessary to make decisions which made the day to day operation of the company more effective.

From its inception in 1670 throughout the establishment and first fifty years of existence of the Red River Colony there were no formal changes made in the decision-making structure. That is to say that the executive and legislative organs of the company, as outlined in the Charter, were not constitutionally changed.

The Governor of the company was to be elected at the annual meeting of the shareholders.⁶ They elected the Deputy Governor (who had to be approved by the Governor) and a Committee of seven. Together, these individuals constituted the executive.⁷ The Governor (and/or the Deputy Governor) along with at least three of the Committee had:

...Direction of the Voyages of and for the said Company, and the Provision of the Shipping and Merchandizes thereunto belonging and also the Sale of all Merchandizes...and the managing and handling of all other Business, Affairs and Things, belonging to the said Company.⁸

⁶Charter, p. 165.

⁷Ibid., p. 164

⁸Ibid.

The Charter specified that Rupert be Governor until the following November 10th at which time a Governor would be duly elected. It also named the first seven members of the Committee.

The annual meeting of the shareholders (to be held sometime in November of each year) was known as the Court General and was responsible for the overall policy of the company. It had the power to remove the Governor or Deputy-Governor "not demeaning himself well in his said Office" and members of the Committee (with the agreement of the Governor and/or his Deputy).⁹ It was then responsible for electing replacements. This particular provision of the Charter was never utilized as none of the executive was ever removed before the term of office expired.

These then were the stipulations in the Charter regarding the organization of the company in London. The Charter's outline of the internal structure of the H.B.C. in America was even more brief. In its stipulations of the court system in America it states that where justice cannot be carried out by a Governor and Council, it is the responsibility of the Chief Factor and his Council to bring any law-breakers to justice.¹⁰

In regards to America the Charter stated that:

...the said Governor and Company shall have Liberty, full Power and Authority to appoint and establish Governors, and all other officers to govern....¹¹

The Chief Factors and their Councils (also appointed by the "Governor and Company", although this was not specifically stated in the Charter)

⁹Ibid., pp. 166 and 167.

¹⁰Ibid., p. 171.

¹¹Ibid.

would govern the smaller posts.

All members of the company from the Governor in London to the clerks in America were required to swear allegiance to the company.

One of the later innovations in the internal structure of the company in America was the joint appointment (not only by the company's executive but also by the Crown) of a Governor-in-Chief. This position was held by James Knight and also by Henry Kelsey. This addition was an attempt, after the English had been granted the right to Hudson's Bay by the Treaty of Utrecht, to centralize the decision-making structure in America. However, there was little communication between the Governor-in-Chief (who was usually at York Factory) and the other posts on the Bay.

Although the Charter was very brief in its outline of the internal structure of the company in America, it was explicit in regards to the legal powers that the company held in America.

...the Governor and his council of the Several and Respective Places where the said company shall have Plantations, Forts...may have Power to judge all Persons belonging to the said Governor and Company, or that shall live under them, in all Causes, whether Civil or Criminal, according to the Laws of this Kingdom [Great Britain] and to execute justice accordingly.¹²

The company was able to constitute any laws that would "seem necessary and convenient for the good of the said Company."¹³ Its Governors and officers were not only empowered to constitute laws for the advancement of trade, but were also able to execute and revoke these same laws as they deemed necessary.¹⁴

¹²Ibid.

¹³Ibid., p. 168.

¹⁴Ibid.

It is interesting to note that the Charter does not explicitly deal with the company's relationship to the native peoples. Nowhere does it name these peoples though of course the formulators of the document must have recognized the importance of these people in the operation of the company.

There is the reference (included in the immediate preceding quotation) to persons who "shall live under" the Governor and Council of various forts. Whether this was intended to include native peoples or simply the relatives of employees is not clear. In this connection, Governor Simpson (Governor-in-Chief from 1821-1856) in several appearances before the British Parliament as spokesman for the defence of the company's actions in America, repeatedly stated that the company interpreted the 1670 Charter provisions regarding law as applicable only to its employees and their relatives.

The realities of life in Red River, for instance, did not seem to support Simpson's assertions. There were those employees of the company who exceeded company jurisdiction. For instance, Adam Thom, first recorder of Rupert's Land, presided over a trial involving two Indian parties and put to the gallows the "guilty" party, in a case that did not involve the H.B.C. This particular trial was brought as evidence supporting the claim of the mis-use of legal power by the company to the 1857 Parliamentary inquiry.¹⁵

The legal powers enunciated by the Charter were interpreted by company men and applied to all individuals who came into Rupert's Land. In Red River the assumption and application of these powers, through the

¹⁵ Alexander Ross, The Red River Settlement: Its Rise, Progress and Present State (Minneapolis: Ross and Haines, 1957), p. 332.

formal appointment of recorders, affected the Scottish settler, the American trader, and the Indian and metis.

The letter of the law was not always clear to the men who lived in the isolated posts, and later the Red River settlement. Not only was it unclear, but often the men living in America saw no good reason to worry about legal abstractions when situations arose that necessitated immediate action to pacify the wronged and punish the wrongdoer. Often, order could only be maintained by the company, as there was no other group or institution with sufficient power (in men and arms) to maintain some semblance of order. Whether or not the methods employed by company men were just or not is not within the scope of the present discussion.

There were challenges to the law of the company. And of course, there were later laws which conflicted with the legal stipulations of the 1670 Charter.

One of these was the Canada Judicature Act of 1803 (also known as the Canada Jurisdiction Act). The Act was originally passed in an attempt by the British Parliament to deal with the bitter, and sometimes, violent fur war being waged in the west between the rival Northwest Company and the H.B.C. It was:

...an Act for extending the Jurisdiction of the Courts of Justice in the Provinces of Lower and Upper Canada, to the Trial and Punishment of Persons guilty of Crimes and Offences within certain Parts of North America Adjoining to the said Provinces.¹⁶

It goes on to say that crimes committed in the Indian Territories, and other parts of America, not within the jurisdiction of civil government of the United States of America, nor Upper or Lower Canada, should be tried in and under the laws of one of the latter two provinces. The

¹⁶₄₃ GEORGII III AD 1803 (CAP CXXXVIII)

Governor of Lower Canada could appoint justices for the Indian Territories for the purposes of bringing criminals to the courts.

Many people in Upper Canada were perturbed by this last provision as they felt that a precedent of Lower Canadian law would be established in the Indian Territories. The H.B.C. was disturbed because the process of bringing criminals to justice was a long and more expensive one under the Act and often incomplete as there were many escapes on the long journey between the Territories and the courts of Lower and Upper Canada.

The Canada Judicature Act was an inconvenience and more importantly it was considered by some to be a strong legal challenge to the company's legal jurisdiction. The company, of course, differed with this opinion. Two years after it became law, Lord Selkirk sought legal opinions regarding the Act's legitimacy. He was informed by his lawyers that the Act gave no jurisdiction to Lower and Upper Canadian courts to deal with legal matters within H.B.C. territory.¹⁷ Even though there was some dispute over the question, the courts of the two Canadas did exercise jurisdiction over the legal affairs of Rupert's Land.

This formal challenge was weakened by other considerations. The most important of these stemmed from a weakness (an oversight) of the Act itself. This was the fact that the Indian Territories were not defined by the Act. It is not clear by reading the Act whether the Indian Territories included Rupert's Land, parts of it, or only the area that was to be known as the Red River Colony. This vagueness accounts for the discrepancies among writers and students of the period in their references to the land area affected by the Act.

¹⁷George Bryce, Mackenzie, Selkirk and Simpson, The Makers of Canada Series, Vol. IX (London: Oxford University Press, 1926), p. 144.

The Canada Judicature Act was further weakened by the fact that the only people available to become justices under the authority of the Governor of Lower Canada were the fur trappers. People were not willing to travel from the Canadas to the Territories to carry out the directives of the Governor. As a consequence, the fur trappers themselves were the only ones who were appointed justices. Given the fact that the Act was originally invoked to de-escalate the fur war, the fur trappers were hardly in a position to provide objective justice.

The Act was one of several threats to the position of the company around the turn of the nineteenth century. It also caused problems for the H.B.C. in Red River.

One final provision of the Charter vis-à-vis the internal structure was in regards to stocks and voting power. The Charter stipulated that "every Person Shall have a number of Votes according to his Stock..."¹⁸ and went on to state that every one hundred pounds invested in the company entitled the subscriber to one vote. This was reiterated in the early Minutes of the company.¹⁹ But there was some confusion on this point as the Minutes for the Committee meeting of April 17, 1672, illustrate:

...three hundred poundes which is the just Summe that one equall Share amounteth unto...²⁰

In practice the amount vacillated between the two figures and there is

¹⁸Charter, pp. 179-171.

¹⁹Rich ed., "Minutes for the Court General of November 17, 1673," Minutes 1671-1674, p. 54.

²⁰Ibid., p. 35 (also referred to on p. 8).

no apparent explanation for the decision to apply one or the other.

This was all that was specified by the Charter regarding the internal organization of the company both in England and in America. It did however deal with a number of very definite areas of power of the company vis-à-vis the land of America and non-company people who came to America. In some cases, it was very explicit in its directions in these areas.

Most important of the grants of the 1670 Charter was the right to exclusive trade and commerce of all the waterways draining into Hudson's Bay together with the land that these encompassed, provided that they were not already possessed by the subjects of any other Christian Prince.²¹ The land was the company's to deal with in any way it thought best. It is probably true that Charles II and the eighteen Adventurers did not have any concept of the enormity of the grant in 1670 and not until Henday (who made his first journey west in 1754) and the later explorations of the nor'westers would the company know of the expanse of the grant.²² Even when the size of the grant became known the H.B.C. chose to maintain posts only on the shore of the Bay and not venture inland. It was not until 1774 when Cumberland House was established that the company had its first inland post.

This reluctance to establish inland posts prior to 1774 was due to the hesitancy and ignorance of conditions of America by the Committee in London. It clung to the original idea that the Indians should and would

²¹ Charter, pp. 163, 167, 169.

²² The area granted by the Charter can be seen by looking at any map showing drainage basins, including the Atlas of Alberta (Edmonton: Government of Alberta and The University of Alberta, 1969). pp. 44-45.

continue to bring furs down to the shores of Hudson's Bay. In the meantime, the Northwest Company was not only exploring in the Winnipeg Basin but establishing posts in the area. Over twenty years before Cumberland House was established the nor-westers had built Fort St. Louis (Fort a la Corne) some one hundred and fifty miles (by air) west of Cumberland House. Because of their position vis-à-vis the Hudson's Bay posts the nor'westers were able to intercept the Indian fur brigades on their way to the Bay posts and trade for the furs originally intended for the English company. This arrangement was acceptable to the Indians, providing the terms were comparable to those offered by the H.B.C., as their journey was considerably shortened. Company employees as early as Henday had been recommending the establishment of posts inland to no avail. The Committee remained adamant in pursuing its policy of posts by the bay until it finally was convinced, not by the recommendations and urgings of its employees in America, but by the drastic drop in quality and quantity of furs received in London.

The entire issue illustrated the ongoing tension between the formal decision-making structure (in this case the Committee) and the realities of the day to day problems faced by employees in America.

The land granted by the Charter would be "reckoned and reputed as one of our [Britain's] Plantations or Colonies in America [and would be named] Rupert's Land."²³ Over this the Company of Adventurers were the "true and absolute Lords and Proprietors."²⁴

In addition to exclusive trade and commerce rights in the drainage

²³Charter, p. 167.

²⁴Ibid.

basin of Hudson's Bay, all discovered and undiscovered mines were to be the exclusive property of the company. Through the years the H.B.C. engaged in little active exploration for minerals although one of the purposes of Hearn's journey (1770-1772) was to investigate the possibility of a copper mine spoken of by the Coppermine Indians who came to trade. In addition, fishing rights within the granted territory were solely the company's.

The Charter did deal with the power of the company in regard to traders who came to America.

We streightly charge, command and prohibit, for Us [the Crown] Our Heirs and Successors, all the Subjects of Us...that none of them directly or indirectly, do visit, haunt, frequent or trade, traffic or adventure, by way of Merchandize, into, or from any the said Territories, Limits or Places, hereby granted, or any, or either of them, other than the said Governor and Company....²⁵

Persons who did so traffic would incur the

...Indignation [of the Crown and company] and the Forfeiture, and the Loss of the Goods...which so shall be brought into this Realm of England, or any the Dominions of the same....²⁶

Not only would the goods be forfeited (one-half going to the Crown and one-half going to the company) but the interloper could be fined as deemed proper by the company.

In other words, unless permission was specifically granted by the company (i.e., by the Court General) all interlopers from England and its colonies would forfeit their goods and be subject to a fine and punishment imposed by the company.

In the early 1680's British, French and American interlopers on the

²⁵Ibid., p. 169.

²⁶Ibid.

seas near Hudson's Bay were a constant threat to the company's position. In addition, the H.B.C. had to deal with its own employees who engaged in private trade.²⁷ As shall be discussed later, the problem of private trade was a recurring one throughout the company's first fifty years in Red River. One of the earliest instances of employee private trade involved one Captain Zachariah Gillam and his son. This case is interesting because it illustrates the powers the company could employ against interlopers.

Sir Jam. Hayes is Desired to prepare a Letter of Attorney to empower some person att Boston in New England to Seize on Young Gillam Commander of the Batchelors Delight whome the Committee is informed went last yeare as an Interloper for Hudsons Bay and Capt. Zachariah Gillam and Capt. Ezbon Sandford if they Arrive there as allso to procure a letter from the Committee of Plantations to the Governr. in New England to be Assisting to such person as the Compa. shall imploy as their Attorney.²⁸

This provision in the Charter against interlopers was useful and was implemented against interlopers from Britain. The provision of the Charter was strengthened by the fact that few pilots other than those employed by the H.B.C. were knowledgeable about the waters of the Bay. This lack of Bay pilots hampered not only the French but also non-company English. (The British "Expectation" and the "Mary" were two non-company ships sent out in an attempt to establish trade but were wrecked in the

²⁷Rich ed., "Minutes of the Committee Meeting on May 25, 1674," Minutes 1671-74, p. 110. See also "Minutes of the General Court of February 24, 1674," Ibid., p. 81, which dealt with the removal from America of Governor Bayley due to the suspicion that he was engaged in private trade.

²⁸Rich ed., "Minutes of the Committee meeting on June 27, 1683," Minutes of the Hudson's Bay Company 1682-1684, p. 116. The Committee of Plantations was a committee of the Privy Council and was also referred to as the "Lords of Trade". Later it evolved into the Board of Trade.

1680's.)

Even though there was a Royal Proclamation in 1688 against interlopers (a consequence of the "Expectation" and "Mary" attempts), the real strength of the H.B.C. against interlopers at this time stemmed from its monopoly of knowledge of and experience in the waters of Hudson's Bay.

The 1670 Charter specifically dealt with war and the role of the British military vis-à-vis the H.B.C.

We do Give and grant unto the said Governor and Company...free Liberty and License, in Case they conceive it necessary, to send either Ships of War, Men or Ammunition, unto any their Plantations, Forts...for the Security and Defence of the same, and to choose Commanders and Officers over them, and to give them Power and Authority...to continue or make Peace or War with any Prince or People whatsoever, that are not Christians...as shall be most for the Advantage and Benefit of the said Governor and Company, and of their trade....²⁹

Furthermore, the H.B.C. could call on various military and government men:

...our Admirals...Justices, Mayors, Sheriffs...Officers, Ministers...and Subjects whatsoever, to be aiding, favouring, helping and assisting to the said Governor and Company...when any of you shall thereunto be required.³⁰

This particular provision was utilized by the governors of Red River.

There was one other stipulation of the 1670 Charter which was and continues to be a confused one in the discussions of students of the company. This was the question of settlement in Rupert's Land.

Red River was of course a H.B.C. settlement. The reason for and

²⁹ Charter, p. 171.

³⁰ Ibid., p. 172

implications of this will be discussed in Chapter III.

The confusion seems to centre around the following questions. Did the Charter prescribe settlement as a right or a duty of the Company of Adventurers? And what was to be the purpose of settlement? Also, what was the ongoing policy of the decision-makers in London regarding settlement? The Charter states the following:

...it shall and may be lawful to and for the said Governor and Company...at all times henceforth, to erect and build such Castles... Colonies or Plantations, Towns or Villages, in any Parts or Places within the Limits and Bounds granted before in these Presents, unto the said Governor and Company, as they in their Discretion shall think fit and requisite....³¹

The Charter goes on to say that the company had the right to supply these places with provisions and ammunition. More importantly, in terms of the present discussion, the Charter stipulates that the H.B.C. could

...transport and carry over such Number of Men being willing thereunto, or not prohibited, as they [the company] shall think fit, and also to govern them in such legal and reasonable Manner as the said Governor and Company shall think best....³²

First of all, it is clear by a reading of the Charter that the company had the right (as granted by a British sovereign) to establish colonies and bring men from overseas. One notes however, that there is no mention of women and children. Whether "men" encompassed or implied families is not clear. And therefore, whether or not the formulators of the Charter foresaw settlement activities as such is also unclear.

There were those groups who maintained that the company had a duty to either settle Rupert's Land or at least allow settlement by others. These groups included Americans, English and towards the mid-1800's,

³¹Ibid., p. 171.

³²Ibid., p. 172.

Canadians.

In this regard there are two interesting pamphlets that were published in 1857 and 1864 that maintained that the H.B.C. had a duty to settle Rupert's Land.³³ The former was published to coincide with the Parliamentary Inquiry of that year into the affairs of the company; and the latter as a result of the Inquiry and subsequent discussions between the Canadians and the Imperial government. At the time these pamphlets were published there was a fear that the Americans might settle and claim parts of Rupert's Land. And therefore the pressure groups felt that settlement by the British was necessary to keep Rupert's Land as part of the empire. Their arguments were not based on the Charter, but rather on the social and political possibilities of the day.

As E. E. Rich states, "there is no word in the Charter which lays fostering of settlement on the company as a duty."³⁴

The second question as to the purpose of settlement is also difficult to answer. Again the Charter is vague and states only that it is the prerogative of the H.B.C. to establish colonies. It does not address itself to the possible purposes of these. However, the company had very definite purposes in mind when it granted Lord Selkirk the right to establish Red River Colony.

The final question of the policy of the Governor and Committee in London vis-à-vis settlement is more easily determined. Up until 1811

³³Liverpool Financial Reform Association, The Hudson's Bay Company Versus Magna Charta and the British People (London: P. S. King, 1857); and Joseph Nelson, The Hudson's Bay Company: What Is It? (London: A. H. Baily and Co., Royal Exchange Buildings, 1864).

³⁴E. E. Rich, The Hudson's Bay Company 1670-1870 (London: The Hudson's Bay Record Society, 1958), I, 56.

when settlement at Red River commenced, the decision-making hierarchy was opposed to settlement in Rupert's Land.³⁵ Settlement in the area controlled by the company was not conducive to the successful establishment of a fur empire. It would weaken the company's monopoly control and disrupt successful trapping. In the early years of course the company was not under pressure to allow settlement, but as the American West opened up and as criticism of the H.B.C.'s monopoly increased the company came under increasing pressure to permit settlement.

E. E. Rich maintains that the earliest intentions of the Company of Adventurers was for the purpose of settlement, but that the change to trade occurred soon after the grant of the Charter in 1670.³⁶ This interpretation of the Charter as being originally intended for the establishment of settlements instead of trade seem to be unique to Rich among students of the Charter. In any event, a close reading of the Charter does not support this thesis. However, there is no doubt regarding Rich's remarks³⁷ that the later predominant purpose was trade. The substantial returns of good quality furs on the Nonsuch convinced the adventurers that the fur trade could be a financial success. The efforts of the decision makers were geared to this end.

The company was not greatly concerned with the exploration and discovery of a northwest passage which was an explicitly stated purpose of the Charter.

³⁵ Joseph E. Martin, "The 150th Anniversary of Seven Oaks," Transactions of the Historical and Scientific Society of Manitoba Series III, No. 22 (1965-66), p. 100.

³⁶ Rich, H.B.C. 1670-1870, I, 56.

³⁷ Ibid.

...an Expedition for Hudson's Bay in the North-west Part of America, for the Discovery of a new Passage into the South Sea...³⁸

The lack of commitment to this objective as stated in the Charter brought about a Parliamentary Inquiry in 1749, largely at the agitation of one Arthur Dobbs. However, the H.B.C. never did take its exploring duties seriously.

In conclusion, the 1670 Charter granted to the Company of Adventurers varied rights, privileges, and duties. As envisaged by the founding members, the purpose of the company was the establishment and maintenance of monopoly trade within Rupert's Land. In other words, the company was a commercial entity. However, an examination of the rights and duties of the company makes clear that extensive political powers were incorporated into the founding document of the H.B.C.

The company appointed all governing authorities in Rupert's Land and their jurisdiction included all functions of government. Essentially, the H.B.C. legislated and executed all laws (within the general scope of English common law) in the territory granted to it. The Charter also provided that the company could punish, as it deemed just and necessary, those who disobeyed company laws. The H.B.C. could enlist the aid of the British military and government in executing company law. It could declare and wage war. Furthermore, the Charter provided the H.B.C. with the right to establish colonies and towns and to engage in immigration schemes to settle them. Based on the provisions of the 1670 Charter the H.B.C. was an institution possessing considerable political power.

³⁸Charter, p. 163.

CHAPTER III

THE EXERCISE OF POLITICAL POWER BY THE HUDSON'S BAY

COMPANY IN RED RIVER COLONY

The H.B.C. was granted varied and far-reaching powers by the British Crown in the 1670 Charter. At the time of its formation the company's sole purpose was to make a profit for its shareholders. In other words, it was primarily a commercial concern.

What is central to this analysis is an understanding that the H.B.C. was also a political institution.

Approximately one hundred and forty years after the grant of the Charter the H.B.C. entered a new phase in its history. Beginning in 1811 the company found it necessary to take on the responsibilities of a governmental institution.

This occurred with the establishment of the Red River Colony. To support these new responsibilities the company legitimized its governing authority by referring back to those powers in the 1670 Charter. In short, the constitution of the political institution (i.e., the H.B.C.) was the 1670 Charter.

The powers granted by the Charter affected all aspects of life—e.g., trade, freedom of travel, education, religion, choice of living quarters, recourse to justice, and waging war. With the establishment and growth of Red River these powers were expanded and elaborated. Under the provisions of the Charter the company legislated and maintained new laws and regulations which affected the lives of the inhabitants of Red River. If legislation was not obeyed, the H.B.C. was empowered to punish the law breaker.

The purpose of this chapter is to examine these laws and regulations

constituted and executed by the H.B.C. in Red River Colony during the first fifty years of life of the colony. How did the H.B.C. exercise political power and in what ways did it elaborate the political structures it developed to exercise that power?

Six major policy decisions will be analyzed in terms of the company's political power vis-à-vis employees, and non-employees. In addition, company exercise of political power vis-à-vis non-employees will be analyzed in terms of the free trade question.

Although the decision to establish Red River Colony with the resulting land grant to Selkirk occurred in 1811, the discussion of this chapter will commence with events two years previous to that time. This is done because a major policy change was adopted by the Governor and Committee in London in 1809 which changed the administrative structure of Rupert's Land.

This new policy is relevant to the discussion for two reasons. First, it marked a reversal in company policy regarding settlement in Rupert's Land. Red River Colony was the manifestation of this new attitude. Second, the colony was to be governed under the organizational scheme outlined in the new policy.

As would be logical with an institution whose primary purpose was commercial gain, the new policy, known as the Retrenching Plan, was instituted in response to economic circumstances. In 1809 the company was heavily in debt and paid no dividends.* There had been an earlier suggestion (from 1805 onwards) that the company move out of the fur trade

* This was the first time in twenty-five years that dividends were not paid. They were resumed in 1815.

arena and into the more lucrative timber trade.¹

The Retrenching Plan (to be discussed later) illustrated the resolve of the executive body to continue the company's commitment to the fur trade. The Plan was the first of six major policy decisions that occurred between 1809 and 1869 that affected the political organization of the company in Red River.

In chronological order, after the Retrenching Plan of 1809 (the first of the six), the important policy decisions regarding the colony were: 2) the establishment in 1811 of Red River with the accompanying structure of government; 3) the Court General Resolutions of May 19, 1815; 4) the union with the Northwest Company in 1821 with the resulting government structure; 5) the resolutions of 1835 of the Governor and Council of Assiniboia; and 6) the appointment of a recorder in 1839.

These policy decisions were not of course the only important ones made by the company during the years under discussion. But they were the ones that most directly and significantly affected the formal political structure of the colony.

Part of the ongoing life of the community was the fact that company employees often made decisions which affected the administration of the colony by the company without direction or approval from the constitutionally recognized decision makers in London. These actions by company employees were of two kinds: 1) those taken by employees who were empowered to make decisions but which decisions contradicted current company policy established by London; or 2) those taken by employees who were not empowered to make decisions.

¹Rich, H.B.C. 1670-1870 II, 272-273, 283, 310.

Often these decisions were made of necessity because there was not sufficient time nor means to receive directives from the Governor and Committee in London. This was an ongoing problem for the company—the location of the decision makers being far removed from the colony. Communications between those who held the power to govern (in London) and those who were governed (in Red River) were uncertain and occurred once, and sometimes twice, during a year. This was due of course to the great geographical distance between them. Ships with trade goods and directives from the Governor and Committee left London once a year, usually in the late spring when sailing conditions were favourable. The trip across the Atlantic usually took about sixty days, barring difficulties on the open sea. Upon docking at one of the ports on Hudson's Bay, the ship would be unloaded and the directives from London would be communicated over land (by canoe and by foot) to Red River. Forced by oncoming hazardous winter sailing conditions the ship (laden with furs) began its journey back to London before messages (in reply to the London directives) could be sent back to the bay. As a consequence, instructions and messages that left London in the spring would be answered in the following autumn when the next ship returned from North America.

Often however, the arbitrary decisions taken by company employees were the result of personal or political factors in the community. Sometimes, they were in direct contradiction to the established company policy. The reasons for this varied, except that it usually felt that the Governor and Committee did not have a realistic grasp of the circumstances in the colony.

As mentioned earlier, the H.B.C. was in poor economic circumstances in 1809 and thus the executive body was open to new proposals regarding

company direction and organization. The Retrenching Plan seemed to offer the solution to the company's economic woes.

In 1809 the Committee was dominated by a triumverate composed of Andrew Wedderburn (later to change his name to Colville), Thomas Douglas (Earl of Selkirk, and hereafter referred to as Lord Selkirk, or Selkirk) and John Halkett. It was this group, or rather Wedderburn in consultation with the other two, that proposed and convinced the Committee to accept the Retrenching Plan. Essentially the Plan called for a recommitment to the fur trade. In order for the company to prosper in the fur trade arena Wedderburn proposed several changes in company organization.

I. THE RETRENCHING PLAN—1809

Administratively, Rupert's Land was to be divided into two Departments—Northern and Southern. Each Department was to be divided into Districts, with each District having a post within which the administrative activities of the District were centralized.

The Districts of the Northern Department were Saskatchewan, Winnipeg (Assiniboia), York, and Churchill. The Districts of the Southern Department were Moose, Albany, and Eastmain.

The reason for this delineation of Departments and Districts was simple. The new organization in Rupert's Land provided for a more definite chain of command—from the Governor and Committee in London to the Superintendent of both the Departments to the Chief Factors of the major posts in each District to the Chief Traders of the minor posts in each District.

This chain of command was bolstered by the second major policy

change instituted by the Wedderburn Plan. This was the "Share of Profits" scheme brought into operation in 1810. Under this policy one-half of the profits made was to be distributed among H.B.C. officers in Rupert's Land. The purpose, of course, was to provide an incentive for an efficient economical operation of the fur trade. The company "servants" (the officers only in this case) would no longer work for a wage alone. Of the fifty per cent of profits put aside for officers in Rupert's Land, one-third was to go to each Superintendent with the remaining one-third of the total profits to be divided among the Chief Factors and Traders. Each was to receive a small set salary plus a set percentage of the profits. It was hoped that the "Share of Profits" scheme would provide an incentive for aggressive action by company men. It should be remembered that the H.B.C. at this time was engaged in a fur war with the Northwest Company.

In addition to the new administrative organization and the "Share of Profits" plan there was a third component of the Wedderburn Plan. This was a suggestion that the London Governor and Committee be more open to the suggestions and needs of company officers in Rupert's Land. However, the London authority did not follow this suggestion. Although the Plan was not successful in instituting greater dialogue between London and North America, it was successful in achieving a healthier economic situation for the H.B.C. as a fur trade company.

Part of its success as a fur trade company after the institution of the new policy was the realization that one method of cutting costs was to stop shipping provisions from England to North America. Indeed the Plan had specified that certain posts in Rupert's Land had to supply

certain commodities for use in the fur trade.² Company posts were not only to be concerned with making a good trade, but also with providing the means of sustaining that trade. Local products were to replace imported products be they used directly in trade with the Indians or by the company employees (e.g., growing and raising their own food).

It was with this new emphasis on local provision of goods that Lord Selkirk's scheme for an agricultural settlement came to be accepted as part of company policy.

II. THE ESTABLISHMENT OF RED RIVER COLONY—1811

Lord Selkirk had been active in various emigration schemes since the turn of the century. His idea of the establishment of an agricultural settlement at Red River complemented the new company policy of establishing local (as opposed to imported) sources of provisions. And because company employees were to be engaged in the business of trade with little time for raising vegetables or cattle, the Committee decided that settlement by agricultural people would be permissible, and profitable, to the company.

In addition to the need for cheap provisions there were other reasons for the company's reversal in policy³ in accepting Selkirk's

²Ibid., p. 292.

³The author (unknown) of the Beaver issue devoted entirely to an historical discussion of the H.B.C. (Autumn, 1970) points out that the idea of a settlement colony was not new to the company. As discussed in Chapter II, the provision for settlement was part of the 1670 Charter. However, the active ongoing policy of the company had been opposed to settlement until the special circumstances (discussed in this chapter) of 1809-1811 necessitated a change in policy.

plan for settlement.

A second reason was the increasing number of retired "servants" who chose to stay in Rupert's Land rather than return to Great Britain. Often they were prompted in their choice by the fact that they had families in North America and also because of the difficulty of adjusting to life in Great Britain after spending years in North America. A colony would solve the problem of a retirement place for these people. The company thought that these retired "servants" would bolster and support the more active company employees in the colony. In the grant to him in 1811 Lord Selkirk was instructed to set aside one-tenth of the land for the use

...of such person or persons being or having been in the service or employ of the said Governor and Company for a term not less than three years...⁴

The third reason for support of the idea originated from the ongoing conflict with the Northwest Company. The colony was to be situated at Assiniboia because this area was the major source of pemmican for the nor'westers. This position was not only strategic in regards to the pemmican supplies but also because it straddled the main east-west route of the rival company from its important post on the Great Lakes (Fort William) to the Athabasca country and further west (see Map I). By situating the colony in the Assiniboia area, the H.B.C. could challenge its rival in terms of supplies and efficient routes to the Athabasca country.

This leads to the fourth reason for the establishment of the colony

⁴"Grant of the District of Assiniboia by the Hudson's Bay Company to Lord Selkirk," The Canadian North-West: Its Early Development and Legislative Records, E. G. Oliver ed., (Ottawa: Government Printing Bureau, 1914), I, 157, (hereafter referred to as Oliver).

MAP I

Trade Routes in Relation
to Red River*



* J. A. Lower, Canada: An Outline History (Toronto: The Ryerson Press, 1966), p. 73.

in Assiniboia—to provide a communications and supply base for the H.B.C.'s planned assault into the rich Athabasca country. The colony would be the administrative base for the Athabasca operations. It would be unnecessary for company "servants" in Athabasca to make the long journey to the forts on Hudson's Bay. Instead Red River would now become the source of supplies and new instructions, and the fur depot.

These four reasons constituted the main factors in the company's decision to establish a colony. There were other, less immediate reasons for so doing. Some writers maintain that one of these was to improve the land value.⁵ Another was "to improve the civilization of the Indians."⁶

It should also be noted that the Colonial Office of Great Britain was not opposed to the establishment of a colony at Red River. The people of Britain were faced with overpopulation, land dispossession, industrialization and an unstable economy. The establishment of a colony in Rupert's Land by the H.B.C. was fully endorsed by the Colonial Office.

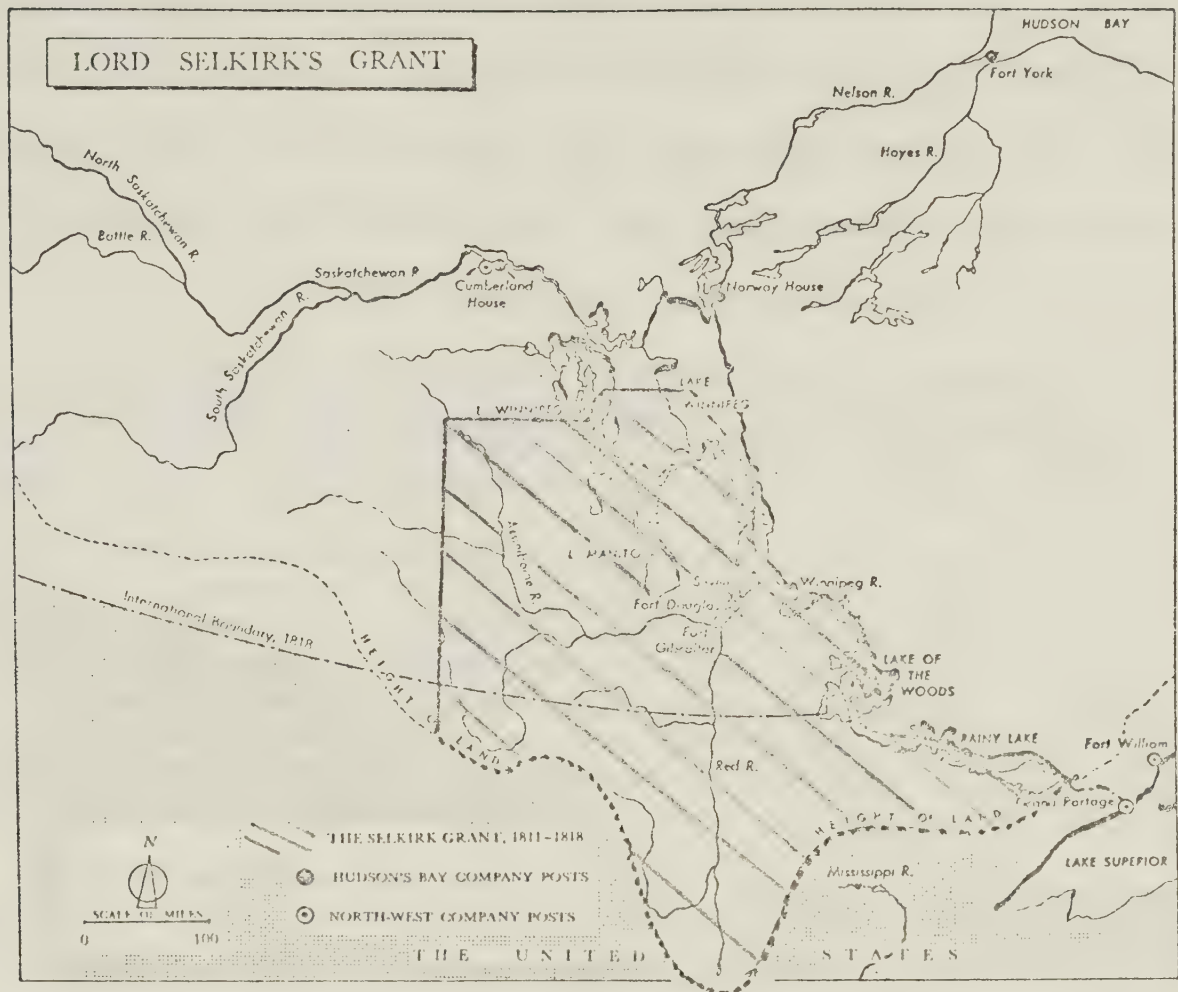
These then were the reasons behind the H.B.C.'s decision to grant Lord Selkirk land within Rupert's Land for the purpose of establishing a colony (see Map II).

⁵ Joseph E. Martin, "The 150th Anniversary of Seven Oaks," in Transactions of the Historical and Scientific Society of Manitoba, ed. by C. J. Jaenen, Series III, Number 22 (1965-66), p. 101; and A. S. Morton, "The Place of the Red River Settlement in the Plans of the Hudson's Bay Company, 1812-1825," in the Canadian Historical Association Annual Report, (1929), p. 105. These two writers are cited here because they are the only two among writers on the subject who state this particular motive behind the company's support of the colony idea.

⁶ Martin, "150th Anniversary", p. 101.

MAP II

Lord Selkirk's Grant*



* J. A. Lower, Canada: An Outline History (Toronto: The Ryerson Press, 1966), p. 69.

On June 12, 1811, Selkirk was granted 116,000 square miles of land. About one-half of the grant of 74 million acres lay in present-day Manitoba—the other half in Minnesota and the Dakotas.⁷ In return for this Selkirk paid a token price of ten shillings and agreed to provide the company with two hundred "servants" annually.

The formal document⁸ granting Selkirk land for an agricultural colony is primarily concerned with the commercial aspects of the colony—trade, shipping, import duties, etc. The administrative structure is

⁷E. S. Russenholt, "Sidelights on the History of Assiniboia," in Transactions of the Historical and Scientific Society of Manitoba, ed. by Thelma J. Call, Series III, Number 20 (1963-64), 27-28. In 1818 the southern half of Selkirk's grant became American territory.

Russenholt advances an interesting thesis on the choice of the site of the colony within the total land grant made to Selkirk. In addition to the obvious geographical advantage of situating at the forks of the Assiniboia and Red Rivers, he states that the site was also a judicious one in view of the location of the Sioux nation. The Sioux were the historical enemies of the Cree, Assiniboin, and of course the whites. At the time of the establishment of the colony the Sioux dominated Minnesota and the Dakotas.

The settlement was far enough north of the movements of the Sioux, and should they move northward the colony had a strong force in the metis who lived in the area for purposes of defence.

Russenholt goes on to say that under Cuthbert Grant the metis became a disciplined force that pushed into Sioux hunting grounds and eventually into the heart of the Sioux homeland with the establishment of the St. Paul—Red River freight route.

Russenholt concludes by saying that:

It was the Metis who made possible the development of farming and commercial potentialities of the area around "the Forks" of the Assiniboia and the Red. Ibid., pp. 28-29.

This writer is unique among writers on the period in his particular emphasis on the importance of the metis in the establishment and maintenance of the colony and the Red River-St. Paul freight route.

⁸"Grant of the District of Assiniboia," in Oliver, 154-167.

not defined in any detail in the document.

The grant dealt with boundaries, mineral and timber rights, division of land, and as mentioned above, those aspects concerned strictly with trade. Selkirk was directed to provide land for retired company employees and to settle one thousand families on the tract of land within the first ten years. There were explicit terms that the trading monopoly of the H.B.C. would not be violated—private trade was strictly prohibited.⁹

In regards to the administration of the colony the document stated that:

...the said Governor and Company...shall from time to time and at all times hereafter pay and apply the same for...regulating and sustaining the police and civil government of the settlements...and erecting public courts, offices, places....¹⁰

It goes on to say that the Governor and Company would be responsible for those things necessary for the well-being of the settlements in Rupert's Land, including Red River Colony.¹¹

The form of government, along with methods of constituting and maintaining it, are not discussed in the document granting Selkirk territory. (The only allusion to government is the one contained in the immediately preceding quote.) At one time, Selkirk thought that the establishment of a joint stock company to oversee the grant would be a possible form of governing the granted territory.¹²

⁹ Ibid., pp. 159-160.

¹⁰ Ibid., p. 167.

¹¹ Ibid.

¹² "Letter from Selkirk to Miles Macdonell, June 13, 1811," in Oliver, 175.

Selkirk was undecided about the form of government the colony should have. At this time the H.B.C. apparently was not concerned with the question as long as the government would not interfere with the company's pursuit of the fur trade. As has been stated above, it did agree to pay for the civil government and police.

With apparently no particular kind of governmental structure in mind, Selkirk appointed a Governor of the colony. He made no provisions, initially, for any other part of the government structure beyond this appointment. It should be noted that while Selkirk appointed the Governor, he (the Governor) received his commission from the H.B.C. This was done to strengthen the position of the Governor in that he would have the powers of the company behind him. In terms of this discussion of the exercise of political power by the H.B.C. it is important to keep in mind this arrangement whereby a Governor of Red River (the most powerful government official in the colony) received his commission from the company.

The difficulty of establishing some kind of government for the colony and the stop-gap measure of appointing a Governor with a commission from the company so that he could have some power, illustrate an ongoing problem of the colony. Was the colony a separate entity—an independent colony—or was it merely an appendage of the company? The 1811 grant is ambiguous and vague on this point.

The question of the type of government for the colony is a central point of discussion in a series of letters between Selkirk and the first Governor of Red River, Miles Macdonell. A year after the grant the letter suggested that a military government (i.e., martial law) would probably

be the best form of government for the new colony.¹³ Selkirk vetoed this idea.¹⁴

Because the power of jurisdiction of the government of the colony was derived from the powers of the company, Selkirk was concerned about the status of the company's jurisdictional claims. His concern was not so much for the details of government but rather for the arena of power in which he could operate in eventually defining the government of the colony. In his letter of June 13, 1813, to Macdonell he states:

The leading and essential point on which the best opinions seem to be united, is that the grant of Jurisdiction contained in the Charter is valid...and is not affected by the Act 43, Geo. III, called the Canada Act. [Canada Jurisdiction Act of 1803 discussed in Chapter II.] The Jurisdiction conferred by that Act on the Courts of Canada is considered as applicable only to Indian Territories—and that the Territories of the Hudson's Bay Company, being a British Colony, do not come under that description.¹⁵

In other words, Selkirk did not recognize the jurisdiction of the Canadian courts over Rupert's Land, specifically over the Red River Colony.

Chester Martin quotes the Selkirk statement regarding the jurisdiction of the H.B.C. (see above quote) in advancing the thesis that Selkirk was

...feeling his way cautiously towards...indirect dependence upon the courts of Westminster.¹⁶

¹³"Extract of Letter from Miles Macdonell to Selkirk, May 31, 1812," in Oliver, p. 177.

¹⁴"Letter from Selkirk to Miles Macdonell, June 13, 1813," in Oliver, p. 178.

¹⁵Ibid.

¹⁶Chester Martin, Lord Selkirk's Work in Canada, Vol. VII of The Oxford Historical and Literary Studies (Oxford: Clarendon Press, 1916), 50.

Martin does not refer to any other statement by Selkirk to support this thesis and whether Selkirk was indeed thinking along these lines is open to question.

Selkirk hoped that the company would exercise the jurisdictional powers granted it by the Charter.¹⁷ But he also recognized that a too violent or, to use his own term "invidious", manner of applying the powers granted would be unwise.¹⁸ He cautioned Macdonell to not be over zealous in the exercise of his jurisdictional powers (i.e., those powers Macdonell held through his commission from the H.B.C.).¹⁹ Selkirk was concerned about a public outcry from anti-monopolists both in England and the Canadas which he felt could cause Parliament to abrogate the jurisdictional powers of the company.²⁰

In summary, the colony of Red River came into being with no specifically designated type of civil government. The ambiguity of the situation resulted in the appointment of a Governor, commissioned by the H.B.C., to govern the colony. The entire question of the legal jurisdiction of the company (and therefore of the Governor of Red River) was open to question. There was some doubt among anti-H.B.C. people in England and among those persons living under the company's jurisdiction in Rupert's Land as to the validity of the powers granted to magistrates and

¹⁷"Selkirk to Macdonell, June 13, 1813," in Oliver, p. 178.

¹⁸Ibid., p. 179.

¹⁹Ibid., pp. 180 and 182.

²⁰Ibid., p. 179.

Justices of the Peace, who were appointees of the Governor of the H.B.C.²¹

Selkirk hoped that the entire question of the legal rights of the company would be brought before

...the supreme Tribunal in England; and in the meantime any exercise of jurisdiction on the part of the Company [through the Governor of Red River] must be confined to what is strictly necessary for preserving the peace and good order of the settlement.²²

The one clear result that emerged out of the ambiguity of the situation was that the colony in 1813 was to be governed by a Governor. He was to assume all those powers necessary for the internal policing of the colony, and to act as judge. By the powers granted in the Charter, he, along with a Council of at least two others chosen by himself, could try civil and criminal cases according to the laws of England. In important cases, such as those involving capital punishment, the verdict and sentence should be first referred to the authority of the Crown before execution of the sentence.²³

Whereas, as discussed in Chapter II, the Charter was vague as to whether or not company jurisdiction extended to non-employees, Selkirk was very definite on that point.

A very material point which appears to be established beyond all doubt, is that every person within the Territories of the Compy. is under their jurisdiction.²⁴

²¹"Notice Published in the Quebec Gazette, December 12, 1811," in Oliver, 176-177.

Governor Macdonell and Superintendent Auld (of the Northern Department) were two of the magistrates appointed in 1811.

²²"Selkirk to Macdonell, June 13, 1813," in Oliver, p. 179.

²³Ibid., pp. 179-182.

²⁴Ibid., p. 182.

He goes on to specifically state that company law would be applicable to employees of the Northwest Company.²⁵

Selkirk, three years after he received the grant, made two other provisions for the governmental structure of the colony in addition to the position of Governor. One of these was provision for a Council:

...you [Macdonell] may issue commissions the form which may be modelled with the necessary variations after your own Com'n. from the Co'y....²⁶

These appointments were to be reported to the Superintendent of the Northern Department (who at this time held the power of attorney of the London Governor and Committee) and to the London Committee for approval.²⁷

The primary purpose of the Council was to advise the Governor on matters regarding the governing of the colony.

The Governor may call the Council or any member of it at his discretion to consult with him upon matters not judicial. It is in the discretion of the Governor to act according to their opinion or not, as he thinks fit; but any measure which is determined upon by the Governor in Council is to be held as done upon the advice of all present, unless those who dissent in the minutes of Council and give in to the Governor a statement of their reasons.²⁸

²⁵Ibid.

²⁶Ibid., p. 183.

²⁷One writer has suggested that although the government of the colony appears autocratic it was "democratic" because the Governor chose respected men in the colony as members of the Council who represented (by their positions and occupations) varied interests. See A Brief History of the Hudson's Bay Company 2d rev. ed; (Winnipeg: Hudson's Bay House, 1936), p. 22.

²⁸"Instructions Relative to Judicial Proceedings issued to Miles Macdonell and Council, 1814," in Oliver, p. 188.

That the Council was only an advisory body in non-judicial matters was reiterated several times. See "Memorandum issued to Miles Macdonell, June 10, 1814," and "Extract of letter from Selkirk to Miles Macdonell, July 9, 1814," both in Oliver, Pages 189 and 190 respectively.

In other words, in all non-judicial matters, the Governor of Red River (subject to the approval of the Superintendent of the Northern Department and finally, of the London Governor and Committee) was the governmental authority, although he could seek advice from his Council. In all judicial matters, the Governor and his Council constituted the authority in both civil and criminal cases. In these judicial matters the Governor and Council were also under the power of approval of the London Governor and Committee.

The second provision made by Selkirk in 1813 for the government of the colony was the creation of the position of Sheriff.²⁹ His duties were to bring suspected persons to the court (i.e., the Governor and Council) and to execute the judgements of the court. The Sheriff was chosen from among those Councillors appointed by the Governor. Selkirk saw no conflict of interest in combining the offices of Councillor and Sheriff.³⁰

In the following year provision was made for the nomination by the Council of four or five constables chosen from among the "respected settlers".³¹ It was the duty of the constables to execute the orders received from the Governor or any Councillor.³²

The "instructions" also state that:

...if in consequence of such resistance [to a constable in the execu-

²⁹"Selkirk to Macdonell, June 13, 1813," in Oliver, p. 183.

³⁰Ibid.

³¹"Instructions Relative to Judicial Proceedings," in Oliver, p. 186.

³²Ibid., 187.

tion of his duty] a scuffle should ensue and the constable should be killed, the assailant who resists him is guilty of murder; but if the assailant should be killed, the constable is not guilty.³³

In summary, in the early years the government of the colony was to consist of: a Governor—jointly appointed by Selkirk and the H.B.C., and a Council—appointed by the Governor of Red River but subject to the approval of the Committee (of which Selkirk was a prominent member). (See diagram I.) One of the Councillors was also the Sheriff. The Council nominated constables of the colony.

In non-judicial matters, the Governor, subject to the approval of the London Committee, and with the advice of his Council, if he chose to heed its advice, constituted the governmental authority of the colony. In judicial matters, the Governor and his Council, subject to the approval of the London Committee, constituted the judiciary of Red River Colony.

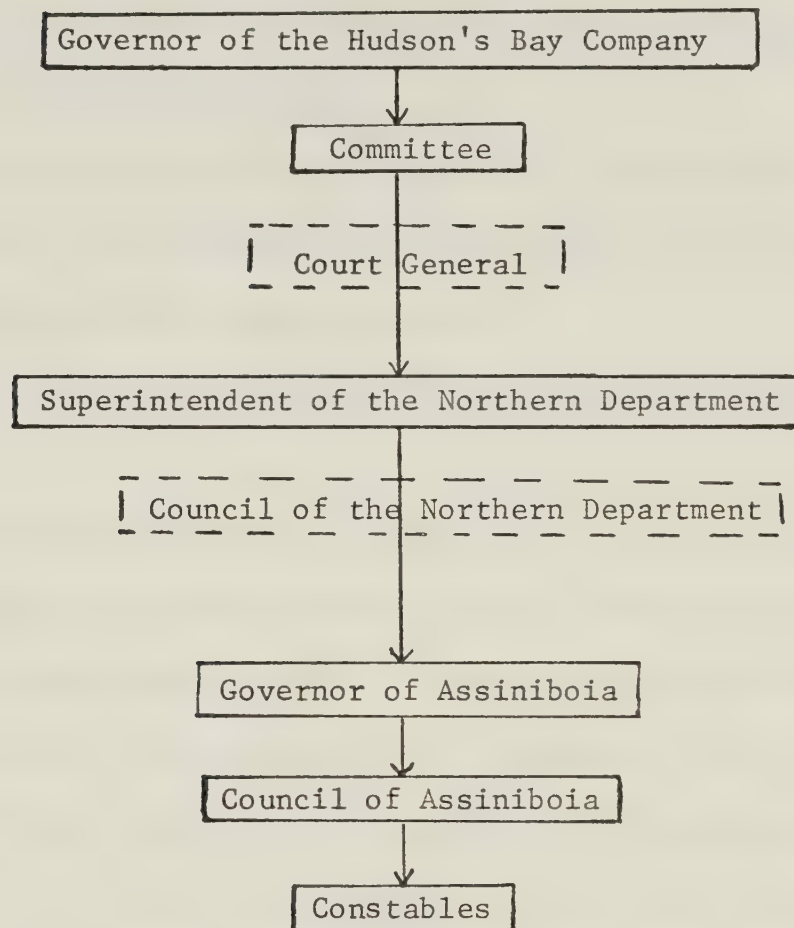
The structure of the early government of Red River has been dealt with extensively because an understanding of it is important to an examination of the exercise of political power in Red River by the H.B.C. The question of whether the colony would be a separate entity or an appendage of the company was an open one. However, it appears, from the foregoing analysis of the early governmental structure of the colony, that the company did not view Red River as an independent colony. It intended to maintain direct control over the affairs of Red River.

W. L. Morton states that neither Selkirk, nor his executors who managed the grant after Selkirk's death in 1820, nor the company (which bought back the granted territory in 1834-35) made much provision for

³³Ibid.

DIAGRAM I

LINE OF AUTHORITY (ESTABLISHED IN 1811-1814) IN THE
EARLY GOVERNING OF RED RIVER COLONY*



*The broken lines indicate the position of the Court General and the Council of the Northern Department in the overall structure of the company—but these two bodies did not, at this time, make decisions affecting the government of Red River.

the government of the colony.³⁴ Beyond the skeletal structure outlined above there was no formal political organization in Red River in the early years.

As the colony grew and community relationships became more complex,

³⁴W. L. Morton, Manitoba: A History (Toronto: University of Toronto Press, 1967), p. 68.

the tensions grew between company employees and non-company people on the one hand and the policies of the formal political structure on the other. These tensions were heightened by the lack on the part of the London Committee of first-hand knowledge of the realities in Red River and by their conservative thinking.

Faced by unrealistic (or in some cases, non-existent) policies, the Governor of Red River sometimes acted in a manner contradictory to the thinking of the executive body in London.

One such action by Governor Macdonell resulted in the Pemmican War of 1814.

Part of Macdonell's responsibility was to provide for the yearly wave of new settlers arriving in the colony. After choosing a site (known as Fort Daer) near the H.B.C. post situated near the junction of the Pembina and Red Rivers (see Map III) Macdonell, late in the fall of 1812, hired buffalo-runners to provide food for the expected group of settlers. He also traded with the free-traders and the metis for pemmican. Free-traders were those persons who traded furs with whoever paid the highest prices at the time and were of course strongly opposed to the monopoly claims of the H.B.C.

Both of these actions by Macdonell were contrary to company policy and the conditions of the grant. He violated a condition of employment (he was commissioned by the company) and a condition of the grant (he was also appointed by Selkirk).

The following year was relatively without hardship as both the H.B.C. and the Northwest Company had withdrawn their posts from the Pembina area and Auld, Superintendent of the Northern Department, supplied the colony regularly with provisions. However, Auld resented the drain this caused

on his trading resources. Knowing this, Macdonell took steps to insure provisions for the colony in the forthcoming year.

Wherefore it is hereby ordered that no persons trading Furs or Provisions within the Territory for the Hon'ble H.B.Co., the N.W. Co., or any individual or unconnected Traders or persons whatever, shall take out any Provisions...procured or raised with the said Territory ...for one twelvemonth from the date hereof...

And be it hereby further made known that whosoever shall be detected in attempting to convey out...any Provisions prohibited as above... shall be taken into custody and prosecuted.....³⁵

This prohibition of goods leaving the colony for one year was in contradiction to the company's understanding that the colony was to be a source of provisions for the fur-traders of the H.B.C.³⁶

Selkirk and the London Committee were disturbed by the rashness of Macdonell's actions. The Northwest Company took a stronger view of the situation. As Rich writes:

...the North West Company construed the proclamation as a direct attack upon itself, which would disrupt its whole system and must therefore be defied, together with the whole structure stemming from the Hudson's Bay Charter....³⁷

Their suspicions were not assuaged when Macdonell appointed a Sheriff and a small police party and seized Northwest Company pemmican. When in the summer of 1814 Macdonell heightened the crisis by prohibiting buffalo hunting on horseback (to prevent stampeding the buffalo away from

³⁵"Proclamation Issued by Miles Macdonell, January 8, 1814," in Oliver, p. 185.

³⁶There is conflicting opinion on the stand taken by the H.B.C. traders in Rupert's Land on Macdonell's Proclamation. Rich maintains that they accepted the embargo. See Rich, H.B.C. 1670-1870, II, 319. C. Martin states that they rebelled against it. See Martin, Selkirk's Work, p. 69.

³⁷Rich, H.B.C. 1670-1870, II, 319.

the colony), the nor'westers formed an alliance with the metis (who lived by buffalo hunting by horseback).

During the summer, members of the Northwest Company, acting under the provisions of the 1803 Canada Jurisdiction Act, arrested employees of the H.B.C. including Macdonell. At this point the colony virtually disbanded and Macdonell, after escaping from the nor'westers, was called back to London. Later, the colony was to be re-organized and re-vitalized by Colin Robertson, a company servant sent to the North-West to open up the Athabasca country for the H.B.C.

The Pemmican War illustrated the kind of problems faced by individuals working within the company structure in Red River. As an individual commissioned by the H.B.C., Macdonell had violated the company's monopoly of trade in 1812 and in 1814 the company's stipulation that Red River was to be a supply depot for company traders. In so doing, he had involved the H.B.C. in a battle with their rival with the resulting disruption of trade. On the other hand, he was forced to act by an immediate situation (the imminent arrival of settlers)* and had no policy guidelines nor aid either from Selkirk (either in his capacity as holder of the grant or Committee member) nor the London Committee, Governor, or Court General. He acted in a policy vacuum and was caught between the conflicting tensions of the colony as an independent entity that required provisions and the colony as a company supply post and settlement regulated by the policy of monopoly trade.

* Another factor in Macdonell's thinking was that war with the United States was a looming possibility. See Martin, Selkirk's Work, p. 69. In 1814 he felt that the embargo was a precautionary measure for public safety (e.g., to ensure food supplies in case of war). He was determined "to endeavour to secure to the British Empire this part of the Country..." See Rich, H.B.C. 1670-1870, II, 319.

III. COURT GENERAL RESOLUTIONS OF MAY 19, 1815

On May 19, 1815, the Court General in London passed resolutions that were an attempt to improve the hierarchy of control in Rupert's Land.

A Governor-in-Chief^{*} and Council were appointed to oversee all company business in Rupert's Land. The former, along with two of his Councillors, constituted the supreme legal tribunal situated in company territory. Its responsibility was to maintain, under the direction of the Committee, the legal powers granted in the Charter.

Another resolution granted the same judicial powers to the Governors and two Councillors respectively of Assiniboia and Moose. Their powers were superseded by the Governor-in-Chief when he was in their districts.

Sheriffs were appointed for the Assiniboia District, the Moose District, and one for the remaining territory of the H.B.C. respectively.

The final provision was that in case of death of a Councillor or Sheriff the Governor-in-Chief appointed a temporary replacement until the London Committee appointed a permanent successor.³⁸

In re-creating the position of Governor-in-Chief, with more powers than had previously been granted any one company official, the Court General hoped to secure the line of authority of the executive body in the company territories. It should be noted that the Governor-in-Chief, higher in authority than the two Superintendents and the final authority

^{*}This position was not new to the organization of the company in Rupert's Land. Before the company established inland posts there had been a Governor-in-Chief at York Factory but this position had been abandoned. However, it was re-created by the 1815 resolutions.

³⁸"Resolutions passed at the General Court of the Hudson's Bay Company, Hudson's Bay House, May 19, 1815," in Oliver, pp. 193-194.

in Rupert's Land, could only make temporary appointments. He was directly under the authority of the London Committee.

The resolutions of 1815 were not an attempt by the company to create better communications upwards. As the arrangements regarding appointments illustrate, the company simply wanted to strengthen the decision-making hierarchy. A consequence of these resolutions was to strengthen the jurisdictional structures of the company by making precise appointments with specifically defined accompanying powers culminating in the position of a Governor-in-Chief directly responsible to the London Committee.³⁹

Based upon the difficulties encountered during the Pemmican War it is conceivable that the London authority might have allocated more decision-making authority to officers like Macdonell in order to deal with emergencies as they arose. Instead the company, as illustrated by the resolutions of 1815, chose to strengthen the Committee's power by appointing a Governor-in-Chief. The Governor and Committee re-affirmed their absolute authority.

This occurred at a time when company "servants" in Red River and elsewhere throughout the company territory were faced with situations arising out of the ongoing fur war and requiring immediate decisions and actions.

In 1815 the London Committee appointed Robert Semple as the first Governor-in-Chief. In addition, he was appointed the new Governor (succeeding Miles Macdonell) of the colony of Red River.

³⁹The legality of the judicial arrangements was in doubt. See Selkirk's letter to Alexander Macdonell (successor to Semple as Governor of Red River) entitled "Suggestions regarding Judicial arrangements, June, 1818," in Oliver, pp. 204-206.

On June 19, 1816, Semple, along with twenty-three settlers, was killed at Fort Douglas (see Map II) by a group of metis under the leadership of Cuthbert Grant. This incident was called the "Massacre of Seven Oaks."

The contributing circumstances of Seven Oaks illustrated the ongoing problem of the company decision-makers' inability to foresee and provide for situations that arose in the colony.

Because of its position on the nor'westers' trade route to the Athabasca country and the H.B.C.'s insistence upon its trading monopoly, the colony was certain to attract hostility during the fur war between the two companies. Furthermore, the prospect of a growing settlement caused the metis to become concerned about the status of their historical claims to the land where the colony was situated. In short, the colony was faced with a potentially explosive situation.

The decision-makers of the H.B.C. provided no policy guidelines for the company "servants" in this situation other than the traditional claim to monopoly trade and land rights. This broad claim was meaningless given the Northwest Company and the metis actions.

In addition to this general and vague area of policy there was the ongoing policy that settlement was not a prime purpose of the company in 1816.⁴⁰

Against the countervailing forces of the Northwest Company, the metis, and the H.B.C.'s lack of support for the idea of settlement, Semple, as Governor of Red River and more importantly as Governor-in-Chief of Rupert's Land, acted upon his own conception of the place of the Red

⁴⁰Rich, H.B.C. 1670-1870, II, 327.

River Colony in the company's plans. In other words, it appears that Semple understood that one of the company's primary purposes was to establish settlements.

This conflict of understanding of company purpose between the company's executive and its chief officer in Rupert's Land is difficult to explain. As Rich states, "the mixture of intentions is inextricable."⁴¹

Had there been clear direction from the London Committee on its policy regarding settlement, particularly the Red River settlement, the confrontation which led to the "Massacre of Seven Oaks" might not have occurred.

Like Macdonell before him, Semple acted in an area of policy ambiguity. Apparently Semple shared Macdonell's strong sense of duty to the settlement and its inhabitants. Both conceived the primary purpose of the settlement to be an independent political entity as opposed to an appendage of the H.B.C. In both instances (the Pemmican War and Seven Oaks) it appears that the executive body of the company was not cognizant of the conditions and pressures inherent in the situations that it had largely created itself (by deciding to establish Red River Colony) and offered no policy guidelines, or only ambiguous generalities.⁴²

It is important to remember that the Pemmican War, the 1815 resolutions, and the "Massacre of Seven Oaks" all took place when the H.B.C.

⁴¹Ibid.

⁴²Rich's thesis on Seven Oaks is that Semple and the London Committee were not thinking in terms of the fur-trade frontier—that violence was part of the code of ethics of those that opposed the settlement and that the H.B.C. was not sensitive to the ever-present possibility of violence. Ibid., pp. 327-328.

and Northwest Company were locked into a bitter fur war. It is probable that the problems arising from this explain in part the lack of direction and conservative thinking (as evidenced by the 1815 resolutions) on the part of the company's decision-making structure. At this time the decision-makers were not prepared to experiment with a new organizational structure that would de-centralize the decision-making authority of the company.

Central to an understanding of the situation is the realization that the company recognized that its claim to holding a monopoly of trade and land rights in perpetuity (granted by the 1670 Charter) was being weakened by public opinion, but more importantly at this time, by the circumstances in the company territories.

...the Hudson's Bay Company had an unpopular theoretical monopoly which actually resulted in the keenest competition....⁴³

IV. UNION WITH THE NORTHWEST COMPANY—1821

The fur war was waged for several years until, drained of resources and deep in debt, both companies decided to amalgamate.

On December 5, 1821 "an Act for regulating the Fur Trade, and for establishing a Criminal and Civil Jurisdiction within certain parts of North America"⁴⁴ granted an exclusive trading monopoly to the newly

⁴³C. Martin, Selkirk's Work, p. 91.

⁴⁴"Grant Made to the Hudson's Bay Company, December 5, 1821," in C. Martin, Selkirk's Work, Appendix D, pp. 218-222.

Frederick Merk states the date as December 6, 1821, in the Introduction to Fur Trade and Empire: George Simpson's Journal, 1824-25 rev. ed.; (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1968), p. xii.

amalgamated company for twenty-one years. This grant of exclusive trade was embodied in the last of three documents concerning the amalgamation. It was preceded by an "Agreement of 26th March" and the actual amalgamation Act of July, both of the same year.

Strictly speaking, the coalition did not include the H.B.C. as such. Rather, the grant of joint trade was to a "board" or joint committee which consisted of the Governor of the H.B.C., plus two members each from both of the companies. Furthermore, the 1821 grant of exclusive trade included areas not already granted to the H.B.C. by the 1670 Charter.

In practice, the H.B.C. extended the powers of trade of the Charter to the "board". That is to say that the new joint concern would also be able to trade within Rupert's Land. In later years the distinction between the two companies became obsolete as they evolved into a working union that was known as the H.B.C.

The December 5, 1821, Act contained detailed stipulations regarding company organization and jurisdiction, relations with the U.S.A. in the area west of the Rocky Mountains,* and of course, rights of trade. Only those aspects of the amalgamation which directly affected Red River will be discussed here.

First, "the Company's right to pursue settlement and colonization was preserved as a separate activity in which the Northwesters would not be concerned."⁴⁵ That is to say that the "board" was not to be involved

* This area had been designated as territory open to both the British and the Americans by an 1818 Convention of Commerce.

⁴⁵ Rich, H.B.C. 1670-1870, II, 399.

with settlement. However, individual nor'westers did form part of the governing structure of the colony.

Second, the land in which exclusive trade rights were granted (i.e., both the chartered land—Rupert's Land—and the licensed land—that granted by the 1821 Act) was re-organized into a Northern and Southern Department. Previously, only Rupert's Land had been divided into these two departments. Both Departments were governed by a Governor and Council respectively. Except for the fact that a larger land area was involved, these administrative structures were similar to those that were constituted in 1811. The new characteristic of the 1821 organizational structure lay in the composition of the Department Councils. Now, instead of being drawn from individuals of the area (both company and non-company people) the Councils were composed of only company employees: wintering partners, chief factors, and chief traders. These councils met once a year.⁴⁶

In terms of this discussion, the composition of Department Councils of company men only is significant because it is a further step toward the centralization of power by the company.

⁴⁶ For a more detailed discussion of the organization of the Departments and the problems encountered see:

1. Alvin C. Gluek, Minnesota and the Manifest Destiny of the Canadian Northwest: A Study in Canadian-American Relations (Toronto: McClelland and Stewart, 1969), p. 8+.

2. Rich, H.B.C. 1670-1870, II, 406+.

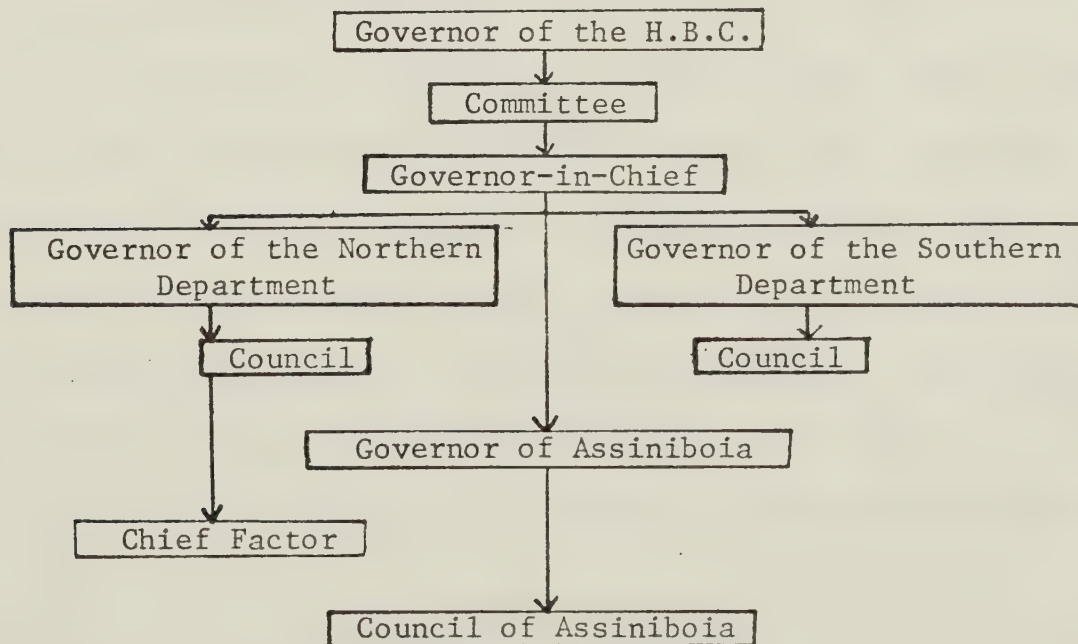
3. W. L. Morton, The Kingdom of Canada 2d ed.; (Toronto: McClelland and Stewart, 1969), pp. 219-220.

4. Harold A. Innis, The Fur Trade in Canada (Toronto: University of Toronto Press, 1962), pp. 285-286 and 322-333.

In 1821 the Chief Factor (appointed by the Northern Department) responsible for trade at Red River was John Clarke, who was posted at Fort Garry. In addition to his duties concerning trade, he was also responsible for the care and placement of company employees moving into the settlement. In the interests of economy, after coalition, the company decided to abandon numerous posts, and at company expense, to transport its employees to the Red River Settlement. Their diverse backgrounds and resulting life styles caused problems in the relatively new and unstable colony.

To compound the problem of an unstable social situation in the colony there was confusion of authority in the administrative levels of the colony. Within the formal political structure of the company, all inhabitants of the colony, including Chief Factor Clarke, were under the authority of the Governor of Assiniboia, who, in 1821, was Andrew Bulger. Bulger, unlike Clarke, received his commission directly from the London Governor and Committee.

FORMAL POLITICAL ORGANIZATION OF THE H.B.C. FROM 1821-22



Unfortunately, the area of authority of Clarke and Bulger overlapped. Clarke was responsible for the commercial activities of the company in the Red River area. Bulger, as Governor, was responsible for the overall well-being of the settlement, including the commercial aspects of the colony. The problem was compounded by the fact that the two men received their appointments from different organs of the organization. And whereas Clarke's appointment was approved by the London Governor and Committee and therefore he was indirectly appointed by them, he was firstly responsible to the Governor of the Northern Department and his Council. On the other hand, Bulger was, in 1821, directly responsible to the London Governor and Committee (through the Governor-in-Chief).

The tension resulting from the overlap of authority and different sources of appointment was heightened by a personality conflict between the two men. Furthermore, they held contradictory views on the purpose of Red River Colony.

Clarke was concerned with Red River as primarily a company trading post and commercial concern. Bulger was primarily interested in the colony as an independent settlement and in the well-being of its inhabitants.⁴⁷ As previously mentioned, these contradictory views on the purpose of the colony were an ongoing problem in the settlement.

The matter came to a head over the question of free trade. Clarke, ever mindful of the company's claim to monopoly trade, issued warnings and arrest warrants against free traders in Red River. He notified Bulger of his warning proclamation by sending him a copy of it. Clarke's actions of issuing proclamations, searching suspected free traders'

⁴⁷Gluek, Minnesota, p. 12.

living quarters, and issuing arrest warrants were construed by Bulger as undermining his authority.

These were patently political matters, belonging to Governor Bulger, and only he could warn free traders and issue search warrants.⁴⁸

Whereas the Governor of the Northern Department, George Simpson, was in complete agreement with Clarke, the London Committee was not, and it removed Clarke from his position.

Unlike Macdonell and Semple who acted in the area of a policy vacuum, Clarke acted in direct opposition to a clearly defined policy that only the Governors of Red River (and their appointed Councils) had judicial powers. In this case, the power of search and arrest.

Clarke was convinced that he was right and stood his ground in opposing what he considered to be interference from Bulger.

I hereby declare it is my opinion that the Governor and Council of Ossiniboia [sic] are not authorized to interfere in the internal affairs of the Honourable Hudson's Bay Company, whether in civil or criminal matters, without the presence and assistance of the Company's representative in the said District....⁴⁹

This statement by Clarke pinpoints the ever present tension between the colony as a commercial entity versus the colony as an independent settlement.

It is interesting to note that Simpson who was soon to become Governor-in-Chief supported Clarke even though he was probably aware of the "illegality" of the latter's actions.

The executive body, in notifying Simpson of the appointment of a new Governor of Assiniboia (Bulger resigned shortly after the battle with

⁴⁸Ibid.

⁴⁹"Letter of John Clarke to the Governor and Council of Assiniboia, Fort Douglas, May 3, 1823," in Oliver, p. 238.

Clarke) was explicit in the description of the Governor's powers so that Simpson, or anyone else, should not repeat the mistakes made by Clarke.

The Governor was to have:

...full powers not only to administer justice...but call upon all Chief Factors, Traders, and Servants...as well as other inhabitants to aid and assist in carrying their [Governor of Assiniboia and his Council] decisions into execution...The Chief Factor, the Chief Traders...are to consider themselves under the authority of the Governor...It is necessary to put an end to all doubt as to the supreme authority in the district to prevent disputes for the future.⁵⁰

This action by the executive of the H.B.C. re-affirmed its policy of the centralization of power. There was to be no question of its absolute authority through the office of Governor of Assiniboia.

In terms of the exercise of political power by the company the London authority held the real political power in Red River Colony. Its primary purpose of government was to insure the commercial success of the company. Commercial success was insured by the maintenance of company monopoly. In so far as the political climate of the colony promoted company profit, the London Governor and Committee were concerned with the "peace, order and good government" of Red River. The decision-makers were "all convinced that a well managed and governed settlement will be of service and if ill managed it will be an injury to the trade..."⁵¹ The company could not afford the problems that arose out of the conflict between two of its officers over the question of the government of the settlement.

In Great Britain, in the Court General resolutions of 1822, dealing

⁵⁰"Letter from Governor, Deputy-Governor and Committee of the Hudson's Bay Company to George Simpson, May 21, 1823," in Oliver, p. 243.

⁵¹"A. Colville to Governor Simpson, March 10, 1823," in Merk, Fur Trade and Empire, p. 190.

with the new government structure resulting from the 1821 union, there were some resolutions dealing expressly with the government of Red River.⁵² First, Andrew Bulger had been appointed Governor of Assiniboia with powers much the same as those granted by the 1815 resolutions. Second, it should be noted that his Councillors were named by the General Court and not appointed by him as had been the case with Macdonell. Third, the final resolution gave Bulger authority to enroll and arm "servants" of the company when he deemed it necessary for the protection of the colony.

After his appointment Bulger made two important recommendations to the executive in London: 1) "to have a company of troops sent out to support the magistrates and to keep the natives in order"; and 2) to have courts and magistrates nominated by the King.⁵³ The first resolution was based on one of the provisions of the Charter. The second resolution was important because it was an attempt to separate the legislative and judicial functions of government.

Both the 1815 and the 1822 resolutions had given the Governor (and his Council in judicial cases) the role of being responsible for carrying out the policies of the company's executive in both the judicial and non-judicial areas. The Bulger recommendation appears to be an attempt to separate this role and to assure that the judiciary was not an appendage of the company.

⁵²"Resolutions passed at a General Court of the Hudson's Bay Company, May 29, 1822," in Oliver, pp. 219-221.

⁵³E. K. Williams, "Aspects of the Legal History of Manitoba," in Papers of the Historical and Scientific Society of Manitoba, ed. by W. L. Morton and J. A. Jackson, Series III, #4, (1949), p. 49.

However, the London Committee felt that the 1822 resolutions were sufficient for the government of the colony. It was supported by the Crown in this position.

...until his Majesty shall constitute Courts and Justices under the said Act [the December Act of 1821] the Resolutions of the 29th instance [the 1822 resolutions] appear well calculated to preserve the peace and good government of that part of North America under the jurisdiction of the Hudson's Bay Company.⁵⁴

This letter resolved the ambiguities surrounding the Canada Jurisdiction Act of 1803. The provisions of the Act had often been brought into play by both companies during the fur war (e.g., arrest of Miles Macdonell). Now, with the coalition and with the statement of the Crown (through Lord Bathurst—then Colonial Secretary) it was clear that the H.B.C. was solely responsible for the administration of justice throughout its territories. The courts of the Canadas had no jurisdiction in H.B.C. land.

By defining the 1803 Canada Jurisdiction Act as applicable only to those areas outside of territories granted to the H.B.C., the Crown Act of 1821 strengthened and centralized the political power of the company in Rupert's Land, including Red River. There was now no doubt that the H.B.C. (i.e., the London Governor and Committee) held complete judicial authority in Red River. No judicial cases could fall under the aegis of the courts of the Canadas. The H.B.C., within the general scope of English law, was the sole authority for constituting and administering law in its territories.

⁵⁴"Letter from Lord Bathurst [on behalf of the Crown] to Joseph Berens, May 31, 1822," in Oliver, p. 221. The District of Assiniboia "had to wait until it became part of the Province of Manitoba for the separation of the judicial from the legislative functions, for a trained and organized legal profession, and for judges appointed by the King from members of the profession." Williams, "Legal History," p. 50.

During the year immediately preceding the coalition Selkirk had died and the grant of 1811 became the responsibility of his executors. Their attitude toward the settlement is well illustrated by the following statement:

The subject of consideration...is not how to form a settlement upon the most solid and enlightened System and government; but how to form the best Settlement and give it the best government that the means and funds which the Executors can properly appropriate to this object....⁵⁵

It appears that Selkirk's executors were unwilling to institute a governmental structure beyond that provided for by the H.B.C. As one author has written, the government of Red River under the Selkirk executors was nothing more than a proprietary government.⁵⁶ However, the London Committee, especially Colville, was at this time committed to a revitalization of the colony.⁵⁷ The colony was after all important in the overall operations of company trade.

The executors' reluctance to manage Red River coupled with the company's insistence for continuation of the settlement resulted in the Selkirk grant being sold back to the H.B.C. Arrangements were made in 1834⁵⁸ and the Selkirk grant was finally purchased in 1836 for fifteen thousand pounds of company stock.⁵⁹

⁵⁵Martin, Selkirk's Work, p. 172, quoting "Memorandum," Selkirk Papers, 7533.

⁵⁶Morton, Manitoba, p. 68.

⁵⁷E. E. Rich, The Fur Trade and the Northwest to 1857 (Toronto: McClelland and Stewart Limited, 1967), p. 257.

⁵⁸"Copy of Minutes of Committee held June 6, 1834," in Oliver, p. 223.

⁵⁹See Douglas MacKay, The Honourable Company rev. ed. (Toronto: McClelland and Stewart Limited, 1966), p. 171, for a description of the transaction.

V. COUNCIL OF ASSINIBOIA RESOLUTIONS—1835

In the period from 1811 to 1834 the Governor of Assiniboia had been appointed jointly by Selkirk, Selkirk's executors, and the company. With the purchase of the grant by the H.B.C. the Governor came, of course, solely under the jurisdiction of the company. As the above discussion illustrates, this had been the case in practice previous to 1835. The Council was also to remain.

In addition, there were several changes in the administrative structure. These were contained in resolutions passed by the Governor of Assiniboia's Council presided over by George Simpson (now the Governor-in-Chief of Rupert's Land), early in 1835.⁶⁰

Perhaps the most significant feature of the 1835 resolutions was the division of the settlement into four districts, each with an appointed magistrate and two constables.⁶¹ The supreme judicial authority of the settlement was the general Court⁶² (not to be confused with the London Court General or General Court) which met four times a year.

⁶⁰"Minutes of a Council held at Fort Garry for Red River Settlement, District of Assiniboia, Rupert's Land on Thursday, the 12th day of February, 1835," in Oliver, pp. 266-278.

⁶¹Ibid., p. 270.

⁶²W. L. Morton, Manitoba, p. 69, states that the General Court was established in 1837. The minutes of the Council of Assiniboia (see footnote number 58 above) state that they were established in 1835.

At first examination it would appear that these provisions were a step towards the separation of powers. However, the magistrates were appointed from among a small circle of friends of the Governor and had no special training in the law. The general Court consisted of the Governor and Council of Red River.⁶³ All cases which involved sums of over five pounds were to be referred to this general Court. Any cases that could not be dealt with by the magistrates (due to uncertainty or lack of legal knowledge, etc.) were to be referred to the general Court. Thus, it would appear, that even with the appointment of magistrates to each of the four newly constituted judicial districts, the judicial power in the community was still very much concentrated in the hands of the Governor and Council (who of course were still directly responsible to the London Governor and Committee).

The 1835 resolutions provided for a Volunteer Corps that was to be commanded at the discretion of the Governor and his Council for the peace and good government of the settlement.⁶⁴

The minutes of the Governor and Council of Assiniboia for the following years illustrate the maintenance of the government structure as outlined by the 1835 resolutions. There were of course some changes, such as the general Court being composed of magistrates instead of the Council, but the legislative, administrative, and judicial authority remained essentially in the hands of the Governor of the H.B.C. and the Committee, through the Governor and Council of Assiniboia.⁶⁵ In 1837,

⁶³"Minutes—Fort Garry—1835," in Oliver, p. 270.

⁶⁴Ibid., p. 271.

⁶⁵See the Minutes of the Council of Assiniboia meetings in Oliver, pp. 279-341.

two churchmen sat as Councillors for the first time.⁶⁶ Although they were not, strictly speaking, employees of the company, they were provided for by the H.B.C. (i.e., their salaries and supplies).

A reading of the minutes of the following decade reveal that through various committees (such as the Printing Press Committee, the Board of Works, the Committee of Finance) the Governor and his Council dealt with such problems as illegal distillation of liquor, crop failure or surplus, and the salary of the constables. In the 1840's and 1850's the Council received petitions from the community on such matters as the postal services (or lack of them, in certain parts of the community), the building of roads and bridges, and the regulation of traffic in liquor.

VI. COURT GENERAL RESOLUTIONS OF 1839

In 1839 the Court General rescinded its resolution of May 29, 1822—the division of Rupert's Land into Northern and Southern Departments each supervised by a Governor. By a resolution of June 13, 1839, the Court General decided that the Governor-in-Chief in the person of George Simpson should be the final authority of the company in Rupert's Land.⁶⁷ He would have one Council of Rupert's Land under him.

The 1822 resolutions had not abolished the position of Governor-in-Chief but had, in practice, relegated that position to one of little importance vis-a-vis the two governors of the departments. (It is interesting to speculate on whether the personal power and desires of George

⁶⁶"Minutes of a Council held at Fort Garry, Red River Settlement, June 16, 1837," in Oliver, p. 279.

⁶⁷"Minutes of a Council held at Fort Garry, on requisition of the Governor-in-Chief of Ruperts Land, June 13, 1839," in Oliver, pp. 283-287.

Simpson caused the Court General to reverse its earlier decision.)

Perhaps the most important resolution of the Court General in 1839 was to appoint a recorder of Rupert's Land and to stipulate that the position be filled by one Adam Thom.⁶⁸ Thom was to continue in his position as a Councillor.

The position of recorder had been created because it was felt that the company required a member of the Council to have some legal training.⁶⁹ His primary function was to preside over the general Court and act as judge when the necessity arose. The settlement was to have four recorders, including Thom, in the following years before it became part of Canada.

The idea of a jury had been discussed as early as 1818,⁷⁰ when the possibility of choosing a jury of five to seven men by picking their names from a hat was thought to be the best method. But in the early years of the settlement the jury system was not utilized. Instead, the Governor and his Council made most judicial decisions.

By 1839 the use of a jury in conjunction with the general Court was specified in the Council's Minutes—in civil cases which involved more than ten pounds and in all criminal cases.⁷¹ The prospective jurors were

⁶⁸Ibid., p. 286.

⁶⁹Roy St. George Stubbs, Four Recorders of Rupert's Land (Winnipeg: Peguis Publishers, 1967), p. 5.

⁷⁰"Suggestions regarding Judicial arrangements, June, 1818," in Oliver, pp. 204-206.

⁷¹"Minutes of a Council held at Fort Garry on requisition of the Governor-in-Chief of Rupert's Land, on Thursday the 4th day of July, one thousand, eight hundred and thirty nine," in Oliver, p. 290.

to be chosen from land-holders of the colony⁷² and were to number twelve. Finally, the judicial districts were reduced from four to three.

Although Red River was divided into four administrative districts in 1835 the judicial and non-judicial functions of government remained in the hands of the Governor and Council of Assiniboia under the authority of the Governor and Committee of the H.B.C. The appointment of a recorder in 1839 did not change this centralization as he was simultaneously to hold the position of Councillor. In the same year there was some decentralization of power in so far that in judicial matters the jury was composed of twelve individuals who were not necessarily company employees. The stipulation here was that they had to be land-holders. This was the first reappearance of some semblance of the separation of the powers of government since 1813.

In summary, from 1839 to 1856, the final authority of the company in Rupert's Land was George Simpson, Governor-in-Chief. When he was not present in the colony, the Governor and Council of Assiniboia constituted the company and governmental authority of Red River. Of course, they, like Simpson, were directly responsible to the executive body of the company in London.

As the Council Minutes illustrate, the Red River governmental structure was constituted to deal with the day-to-day problems of the community (e.g., building of roads, postal services). In addition, it, along with a jury in some cases, was constituted to deal with some matters of a legal nature. Essentially, the governor and Council was the legislative,

⁷²Ibid.

administrative, and judicial body of the Red River Colony.⁷³

Central to this discussion is the fact that the Governor and Council of Assiniboia even from 1839 onwards were not independent from the company's executive in London. On the contrary, there were very much under the authority of the Governor and Committee and the Court General.

Most importantly, the governing structure was appointed by the Governor and Committee. Also, all the decisions of the Governor and Council were subject to the approval of the Governor and Committee.

In some cases where the Governor and Council acted in a manner they thought was in agreement with company policy, but without consultation with London, their decisions were revoked by the London Committee. For instance, in 1850 the Governor and Council requested that the Governor-in-Chief of Rupert's Land (A. Colville, nephew of the Colville who was to become Governor of the H.B.C. in 1852) "occupy the place of President of the Council."⁷⁴ Soon after, A. Colville received explicit instructions from the London Committee that he was "no longer to preside, either in Court or in Council."⁷⁵ At the same meeting it was noted that the Committee approved an earlier recommendation that Thom be removed as recorder. In addition, London revoked Thom's commission as Councillor

⁷³Despite Simpson's protestations to the contrary (Stubbs, Four Recorders, p. 15) and by its own admission ("Minutes of a Meeting of the Governor and Council of Assiniboia, November 18, 1847,) in Oliver, p. 340), the Council did legislate for all inhabitants of the settlement, and not just for company employees.

⁷⁴"Minutes of a meeting of the Governor and Council of Assiniboia, held at the Court-house on Thursday the fifth day of September, one thousand eight hundred and fifty," in Oliver, p. 359.

⁷⁵"Council Chamber, Thursday, 1st May, 1851," in Oliver, p. 363.

and approved the Council's decision that he be offered the office of Clerk of the Council and of the Court.

A report of the Law amendment Committee to the Council in 1851⁷⁶ sums up the position of the Council in terms of its powers vis-à-vis the government of Great Britain and the H.B.C.

I. Our local legislature is restrained by all the statutes of the imperial parliament which may apply to Rupert's Land...

This refers to such Imperial Acts as the 1803 Canada Jurisdiction Act and the 1821 "Act for regulating the Fur Trade, and for establishing a Criminal and Civil Jurisdiction within certain parts of North America"⁷⁷ which granted exclusive trade rights to the company after amalgamation with the Northwest Company.

II. Our local legislature, moreover, owes allegiance, the same in kind, though different in degree, to the regulations of the Governor and Council of Rupert's Land...

At the same time of the report Governor Simpson had been the Governor-in-Chief for approximately thirty years and had become a strong influence in the governing of Red River. The administrators in the settlement reported to Simpson who reported to the London authority.

III. Our local legislature is subject, also, to the provisions of the Company's Charter...

IV. Our local legislature...has no right to control any one of the Company's chartered powers, whether territorial, or commercial, or political, within the district, unless it shall have been expressly invested with such right by the Company itself...

Point IV re-affirms the power of the London Governor and Committee. In terms of this discussion, these two statements from the report answer

⁷⁶Ibid., pp. 370-372.

⁷⁷"Grant Made to the Hudson's Bay Company, December 5, 1821," in Martin, Selkirk's Work, Appendix D, pp. 218-222.

in part the questions of the basis of the exercise of political power by the company and the method of exercising that power. In terms of the latter, the London authority established the structures through which it exercised political power in Red River.

V. In addition to all the general restraints our local legislature lies under two special restrictions:

First. The Indian tribes do not stand on the same footing as British Subjects....

Secondly. The embodied pensioners, to whom had been committed the protection of the Settlement, are partly soldiers and partly citizens ...so far as they are soldiers at all, they live under a law of their own, with which our local legislature has nothing to do....

VI. Even when not fettered by any of these five considerations, our local legislature, according to the very terms of the Charter, is morally bound to follow the spirit of the laws of England for the time being....

In summary, the report illustrates the basis for and the conditions surrounding the governing structure of Red River. It referred back to the 1670 Charter and the subsequent Imperial Acts to illustrate the basis of power of the H.B.C. It pointed to the decision-makers who defined the government of the settlement. It summarized the position of the Governor and Council of Assiniboia in the early 1850's. The relationships described by it existed from the early years of the settlement to the time of Confederation.

THE FREE TRADE QUESTION

The analysis of the exercise of political power by the H.B.C. has to this point, been largely concerned with the exercise of this power over employees of the company. While, as discussed above, officials of the company maintained that H.B.C. authority was exercised only over employees, this was in fact not the case.

The very structure of the government of Red River between 1809 and the 1850's precluded the claim of the officials. The Governor, appointed by Selkirk, Selkirk's executors, and/or the London Committee, was the supreme governmental authority over all inhabitants of Red River. The legislative Council of the colony was not representative, yet, within the scope of its authority granted by the Committee, constituted rules and laws by which all inhabitants of the colony had to abide. Of course, the London Governor and Committee, who held the real political power regarding the community were neither representative nor receptive to the needs and desires of its employees, let alone those of the non-employees. Furthermore, the judicial functions of the community were carried out by appointees of the London Committee and were applicable to employees and non-employees alike. The H.B.C. did constitute the government of the colony and its decisions naturally affected all the inhabitants.

The manner in which the H.B.C. dealt with the question of free trade in the Red River Colony illustrates the exercise of political power over non-employees. The purpose here is not to describe the growth of the free trade movement but to demonstrate the exercise of political power by the H.B.C. over non-employees in terms of the issue of free trade. Free trade as discussed here is essentially trade free from the monopoly control of the company.

To understand why the question of free trade became an issue in Red River after 1821 it is necessary to understand the geographic, economic, and political factors of the colony in terms of the company's ongoing policy of monopoly control.

The Imperial Act of 1821 had granted exclusive trade rights to the

H.B.C. in areas as remote as the Mackenzie Basin and the mouth of the Columbia River. These areas were rich in furs, but the competition from non-company people was intense. The returns from these areas could be high if the company could destroy competition. The greater distances involved heavier transportation costs which meant larger initial outlays of capital and a slower turnover. The H.B.C. was a large enough institution to make capital expenditures and wait some time for returns. Of course, the returns had to be substantial enough to warrant this long period between expenditure and return and for this reason the maintenance of the company monopoly was vital.

As John S. Galbraith points out, the problem facing the H.B.C. regarding competition was at the same time facing the British Governors in India and South Africa who were "forced to cope with the turbulent frontiers endangering the areas they had been appointed to control."⁷⁸ As Galbraith explains, the usual solution was the annexation of border territories to the empire either directly as in South Africa or through the establishment of satellite states as was frequently done in India.⁷⁹

The H.B.C. also attempted in some areas to establish these "buffer zones" to protect interior areas rich in furs. However, the nature of its frontier was different from those of India and South Africa⁸⁰ in that the division was between an area that was monopolistically controlled and an area that was characterized by fierce competition. This

⁷⁸Galbraith, Imperial Factor, p. 10.

⁷⁹Ibid.

⁸⁰Ibid.

of course was the southern boundary of H.B.C. land. Here was where the colony of Red River was situated. Whereas "buffer zones" might prove effective in the remote north-western areas they were not applicable in the District of Assiniboia which geographically constituted part of the H.B.C.'s southern frontier. Galbraith states that:

Along the international boundary to the south the threat came, not directly from American fur traders but from half-breeds at Red River who engaged in farming as well as in fur trading.⁸¹

He goes on to say:

The proximity of American settlement provided the Red River colonists with opportunities for trade and encouraged their independent tendencies...⁸²

The method of defense of the H.B.C. monopoly was to force its competitors to absorb such high losses that they would be forced to withdraw from the area of the southern border.

One of the reasons why the H.B.C. was amicable to the establishment of Red River was that the colony would be a source of cheap provisions for the company's new commitment (in the years after 1811) to challenge the Northwest Company in the Athabasca country. This indeed had been accomplished by encouraging an agricultural community in Red River. Together with the pemmican produced by the metis in the area, the H.B.C. had a good cheap source of provisions for the fur trade.

However, by the mid-1820's the company was faced with the problems of over-production.

For its surplus, whether beef or dried buffalo meat, the settlement needed a market bigger than the Company. And yet how could an exter-

⁸¹Ibid., p. 12

⁸²Ibid., p. 46

nal market be found for such bulky food products. The freightage alone would have precluded profit-making....Furthermore, it needed some market other than the United States, which was ruled out by geography in the 'twenties and 'thirties and the Company self-interest at any other time.⁸³

It should be noted that markets south of the international border were considered to be accessible or non-accessible in terms of the commodities shipped. For instance, in terms of bulky foodstuffs which commanded relatively low prices it was considered unfeasible to ship goods south. In other words, the markets were inaccessible. In terms of the fur trade, which brought much higher returns, the markets were considered accessible. In short, the prices paid for furs warranted trading with markets south of the international border.

The surplus production of foodstuffs was, by the 1830's, cause for concern in the colony as the dissatisfaction of the producers caused them to question the monopoly control of the company. Whether or not the company policy was directly responsible for this situation was not of concern to these producers, but frustrated by the lack of accessible markets for their surpluses, they resented the lack of free enterprise in the community.

In addition to the problems arising from the geographic location of the colony and the economic problems encountered there, there was a third factor causing unrest in the colony and adding fuel to the free trade question.

This third factor was political. In essence it was the lack of power by the people of Red River to determine their economic welfare. As discussed previously, the governing structure of the colony was not

⁸³Gluek, Minnesota, p. 20

representative and often oppressive to those individuals who wished to trade with the highest bidder for furs or agricultural products. In short, the company adamantly held to its policy of monopoly control and those who provided the company with the products of trade (e.g., the metis who supplied pemmican and furs (along with the Indian) and the white settler who produced the agricultural goods) had no voice in the governing of their economic welfare. The free trade issue illustrated the ongoing tension between the colony as a commercial entity and an independent community.

In summary, what were the factors which caused free trade to become such a contentious issue: first, the geographic position of the Red River— its close proximity to the southern frontier of Rupert's Land and the American market and traders; second, the economic (commercial) realities of the colony— the colony was central to the fur trade as a commercial centre for the company; and the surplus of goods (non-fur) produced there; third, the political structure of the community which excluded the vast majority of its inhabitants from having a voice in the determination of their economic lives; and fourth, the monopoly control policy of the H.B.C.

In the 1820's the H.B.C. adopted a new policy in regard to its employees. Instead of sending them out to trade, it began licensing private individuals to trade in furs within the District of Assiniboia. Now, its employees were not out in the field but rather were employed in the management of company posts such as Fort Garry. In addition, the company established a new price policy which paid the metis and the white settlers more than the Indian.

One speculates that this price policy was not determined by a com-

pany racial policy, but rather by the economic and geographic circumstances of the time. The metis and whites were based closer to or in the settlement while the Indian peoples lived in their respective territories and were often reluctant to undertake long, and often hazardous journeys down to Red River. The H.B.C. was reluctant to establish and maintain numerous posts away from major settlements due to the high costs of transportation of supplies. Therefore, the company probably reasoned that the cost of reaching the Indian supplier of furs would justify the reduced price paid to the Indian. Under this price policy it was profitable for the metis and white inhabitants of the District to purchase furs from the Indians and re-sell them to the company.

These new policies regarding employees and price structures helped to bring about the increasing activity in free trade in the 1820's and 1830's. This of course was not the intention of the company, but the licensing of private individuals created a body of men who were less receptive to the monopolistic policies and authoritarian directives of the company and would, even though receiving their licenses from the company, often trade with the highest bidder for their furs. If the company revoked their licenses, as it often did, they would simply take their furs across the southern boundary. At the same time a growing number of non-licensed (by the H.B.C.) individuals began trading. If the H.B.C. would not take their furs, the rival companies south of the border would, and this could lead to a shortage of furs for the H.B.C. Under the new price policies the newly created middlemen would also seek the best trade which might not necessarily be with the H.B.C.

However, with increasing competition the company paid ever increasing cash prices for furs which in turn stimulated more free traders.

This was after all the company policy regarding competition on its borders.

In order to discourage the increasing development of the free movement the company resorted to the powers granted it by the 1670 Charter. It served warrants upon free traders, confiscated their furs, and threatened deportation.⁸⁴ But it soon became apparent that the company did not have the resources in terms of manpower to put all its energies into apprehending the free traders.

By the early 1840's the free trade question had become a central issue in the community because of three developments in or near Red River.

First, the 1830's and 1840's were a period of population growth in Wisconsin and Minnesota.⁸⁵ Some of these people became traders. The H.B.C. had an agreement with the American Fur Company that prohibited American settlers from trading with any one other than the H.B.C. in the area around Red River. However, this agreement expired in 1843 and was not renewed by the American company. In 1844 an American trader, Norman Kittson, established a trading post at Pembina (see Map III). This post, along with the growing number of American traders strongly challenged the monopoly control of the company.

Second, in 1844 Governor-in-Chief Simpson cancelled all licenses for independent traders who operated near the southern frontier. This was of course a reversal of the policy adopted in the early 1820's of

⁸⁴Ibid., p. 38.

⁸⁵For population statistics on this area from the 1830's to the 1870's see Galbraith, Imperial Factor, p. 62.

MAP III

Posts in Red River*



The Red River Region

* E. E. Rich, The Fur Trade and the Northwest to 1857 (Toronto: McClelland and Stewart Limited, 1967, p. 206.

licensing private individuals and utilizing all company employees within company posts. The licensing policy did continue in the interior regions of company control.

Third, Alexander Christie, Governor of Red River at this time, issued a proclamation regarding trading outside of the company monopoly.

The Company would no longer transport the goods of any settler unless he signed a declaration that since December 8, 1844, he had neither directly or indirectly trafficked in furs, and that in the future he would neither engage in the illegal fur trade nor give advances of goods or money to anyone who was generally suspected of trafficking in furs. If by mid-August, 1845, any person who had signed this statement was found to have violated this oath, the Company's officers would be authorized to detain his goods at York Factory or to purchase them at their original cost.⁸⁶

Galbraith reasons that the proclamation was designed and promoted by Simpson.

The notice was the product of a strange delusion by Sir George Simpson that the Company, without the resources to control the Red River settlement, could by fiat destroy the illicit trade.⁸⁷

Christie also served notice of the censorship of mail in an effort to control "illegal trade".

In summary, the company was faced in the 1840's not only with increasing pressure from within the colony for free trade, but also had to contend with increasing numbers of American traders south of the international boundary. By this time substantial trade was being conducted through Pembina between St. Paul's in Minnesota and the Red River settlement. This trade was both in terms of cattle being driven south by settlers from Red River (a trade supported by the H.B.C.) and of fur.

⁸⁶Ibid., p. 63

⁸⁷Ibid. The London Governor and Committee were to veto this proclamation against trading.

In order to prevent the "illegal trade" of the latter the company a) revoked licenses to traders on the border; and b) placed an embargo on those goods intended for individuals suspected of illegal trade by the H.B.C. It did however attempt other means, as discussed below, of protecting its monopoly trade.

In June of 1845 Simpson made his annual visit to the Red River Colony. As provided for by the 1815 resolutions, he chaired the meeting of the Council of Assiniboia that considered a petition from the metis traders requesting exemption from import duties on goods imported from the United States. The decision of that Council was to allow a very restricted import of goods for use within the colony, but that some items, such as stoves for instance, could not be imported. The Council felt that such items could be used by the metis (the middlemen in the then current trading scheme) as items of trade with the Indians. The Council also passed regulations which, if enforceable, could prevent private traders from obtaining supplies.

In addition to imposing import taxes and prohibiting the import of certain commodities the H.B.C. utilized other financial means.

The H.B.C. regulated the currency of Red River settlement. Although the currency was company bills of exchange with London, and not coined, it was still readily accepted in St. Paul. The Governor of the District was responsible for both the number issued and the rate of discount.⁸⁸ In 1844 Christie began to restrict their issue and made them payable at Fort Garry at a discount of five per cent.⁸⁹

⁸⁸ A. M. John and E. E. Rich eds., Eden Colville's Letters, 1849-1852 (London: The Hudson's Bay Record Society, 1956), p. lxiii.

⁸⁹ Ibid.

A year later Christie threatened to call in all the company's notes if there was not an end to the co-operation and assistance given the "illegal" traders.

W. L. Morton states that the result of this proclamation was not what was intended by Christie—the traders "bought up the supply in the Settlement and created a shortage from which the Company itself began to suffer."⁹⁰

The H.B.C. employed British troops in an effort to discourage private individuals from free trade. Ostensibly, Simpson pressed for the deployment of British troops to Red River because of the American threat to British soil, i.e., the North West including of course Red River.

This was the time of the election campaign in the United States which saw annexation of the Oregon territory as a party plank in the Democratic platform. In 1844 James K. Polk (Democrat), of "54° 40' or Fight" fame was elected President.

When news of Polk's inaugural reached Whitehall, Sir George Simpson was in London, and at once he and Sir John Pelly, Governor of the Hudsons Bay Company, were closeted with the Prime Minister, Sir Robert Peel. Simpson and Pelly shrewdly saw in the British government's concern over Oregon a chance for them to garrison the Red River Settlement and thus preserve the Company's trading monopoly by over-awing the free traders.⁹¹

The entire Oregon question is one of great importance in the political history of Canada, but it is not within the scope of the present discussion. The relevant point is that the American threat to British soil was manipulated by the company for the purpose of maintaining monopoly control. Alvin Gluek points out that Pelly and Simpson so "adroitly

⁹⁰ Ibid., p. lxiv.

⁹¹ Gluek, Minnesota, p. 60

blended the Company's commercial interests with British sovereign interests that only the most astute servant of the Colonial Office could have separated them."⁹²

The important development, in terms of this discussion, was that troops* were stationed in Red River between 1846 and 1848. While they were not employed to physically contain free traders their presence was sufficient to discourage free trade—"within a year, the free-trade movement was virtually suppressed...."⁹³

Despite vigorous protests from company officials, the troops were withdrawn in 1848 as the Imperial Government saw no immediate annexationist threat from the United States. As a result, free trade began to increase.

The H.B.C. also employed the courts of Red River in an effort to discourage free trade. The most important trial case was that of the Hudson's Bay Company versus Sayer. Sayer was a metis.

A description of the events⁹⁴ of the trial is not relevant to this

⁹²Ibid., p. 62.

* Four hundred members of Her Majesty's 6th Regiment of Foot; Royal Warwickshires

⁹³Ibid., p. 68.

⁹⁴For a description of the Sayer trial see:

1) Alexander Ross, "Hudson's Bay Company versus Sayer" in Donald Swainson ed., Historical Essays on the Prairie Provinces (Toronto: McClelland and Stewart, 1970), pp. 18-28, quoting Alexander Ross, The Red River Settlement: Its Rise, Progress, and Present State (London, 1856), pp. 372-386.

This essay is of special interest because Ross was an influential person in the Red River Colony and a member of the court that tried Sayer.

2) Williams, "Legal History," pp. 51-54.

3) Morton, Introduction to Eden Colville's Letters, p. lxxx-lxxxvi.

discussion, but the significance of the trial in terms of free trade is important to an analysis of company political power vis-à-vis non-employees in Red River. The most important point is that the company arrested, held and tried private individuals on the charge of illicit trafficking in furs with the natives.

The Sayer trial was held on May 17, 1849. The court was, as provided for by the 1835 Council of Assiniboia resolutions, composed of the Governor and Councillors of Assiniboia, who received their appointments from the London Committee.

The circumstances of the trial were tense with a group of armed metis surrounding the place of trial. The verdict was that Sayer was guilty. However, the foreman of the jury recommended mercy as it was, he felt, apparent that Sayer and the others on trial were under the impression that there was free trade.⁹⁵ Apparently no sentence was imposed on Sayer.⁹⁶

It is important to note that the outcome of this trial was that the metis perceived that since no sentence was imposed on Sayer then free trade must be acceptable and legal.

Alexander Ross, who observed the events of May 17, 1849, described the events as follows:

As the offenders troubled themselves very little with the subtleties of the law, it was their own belief, and that of their people, the metis, that they were honourably acquitted, and that trading in furs was no longer a crime. Not a word was said whether the half-breeds were or were not to trade furs in future, and so obscure were their perceptions of the real value of the decision that one of the jurymen, on reaching the court door, gave three hearty cheers..."Le commerce

⁹⁵Williams, "Legal History," p. 52.

⁹⁶Ibid.

est libre! Le commerce est libre! Vive la liberte."⁹⁷

In summary, the Sayer trial was, in terms of this discussion, significant for two reasons. One, the company, in the interests of protecting its monopoly, arrested and tried private citizens of Red River. Two, the trial was a pivotal point in the ongoing battle between monopoly trade and free trade. From 1849 onwards, the H.B.C. was increasingly unable to control the growing free trade movement.

The H.B.C. had employed varied methods to destroy free trade in Red River. In so doing it had exercised considerable political control over private individuals. Not only did it constitute rules and regulations affecting these individuals, but it also punished them when its rules were not obeyed.

The H.B.C. employed the powers granted it by the 1670 Charter and legislated by the London Committee and the Council of Assiniboia, and when these proved ineffective it employed those political powers it had by virtue of its size in terms of manpower and territory controlled. It employed powers it held by virtue of the fact that it operated in a political vacuum—there was no other institution in Red River as powerful and therefore the H.B.C. was able to exercise those powers which were beyond its constitutional and legislative mandates.

First, under the provisions of the 1670 Charter, the H.B.C. in its attempt to destroy the free trade movement, arrested and brought to trial private individuals. It will be remembered that the Charter was not explicit as to whether non-employees came under these provisions, although the company did prosecute non-employees as in the Sayer trial.

⁹⁷Ross, "H.B.C. versus Sayer," pp. 20-21.

Furthermore, under the provisions of the Charter the company employed British troops to protect its monopoly.

Second, under the powers legislated by the London Committee and the Red River Governor and Council (and stemming from the 1670 Charter) the H.B.C. withdrew licenses of trade, withdrew credit, refused to transport supplies, imposed import duties, restricted importation of certain goods, and manipulated the currency of Red River.

Third, by virtue of being the single powerful institution in Red River and therefore operating in a political power vacuum, the H.B.C. exercised those powers not provided for by the Charter nor succeeding legislation. The company seized private property (in the form of furs and goods used in trade), threatened deportation, and censored mail.

These actions were often taken against employees. Perhaps a case might be made for the "legality" of these actions by stating that these were terms of employment. However, these actions were also taken against non-employees. Whether or not these company actions were warranted or right is not within the scope of this discussion. Rather it is important in terms of this analysis to understand that these actions were employed and that they illustrate the scope of the political power of the H.B.C. and the methods of exercising that power.

* * * * *

Chapter III has dealt with the question of the methods employed by the H.B.C. in exercising political power in Red River. The real political power of the company was vested in the London Governor and Committee. They established and maintained a formal political structure in Rupert's Land. Part of this structure was the government of Red River. The governing officials of the settlement were the Governor and Council who

received their directives from the London authority and who were responsible to that authority. All three functions of government—legislative, executive, and judicial—were the prerogative of the London authority and there was no serious attempt by it to separate these functions. During the life of the settlement from 1811 to the early 1850's the structure of the government of Rupert's Land varied, but the position of the Red River administrators and their relation to London remained the same.

The political structure through which the H.B.C. exercised power in Red River was: a) far removed from the area governed; b) non-representative; c) non-responsible; and d) centralized.

The political power exercised through this structure was aimed at preserving the company monopoly and the resulting commercial gain. In order to maintain its monopoly the company utilized the powers granted it by the 1670 Charter; it elaborated its formal political structure; it applied economic and political pressures in Rupert's Land and Great Britain respectively; and, it punished those who disobeyed its laws.

CHAPTER IV

THE END OF THE HUDSON'S BAY COMPANY

AS A POLITICAL INSTITUTION

The H.B.C. had been able to maintain its monopoly control and special status in Rupert's Land for three reasons. First, it was a powerful and well organized institution in a geographic area devoid of any other strong organization. Second, there were influential persons in the London authority who were in close contact with the Imperial government. Conversely, the Colonial Office in London was interested in maintaining British control over the territory. By having the company responsible for the governing of the land the Colonial Office was able to maintain it as part of the British empire without any of the accompanying problems (which were the responsibility of the H.B.C.). Third, the white inhabitants of Red River were interested in maintaining order in the community and therefore they did not, for the large part, constitute a disrupting influence in the settlement. The question of free trade was a source of tension in the community, but aside from this one area, the settler's were, like the governing company, interested in maintaining order. This was true until the early 1850's.

By the mid-1850's the growth of the free trade movement and unrest in the community of Red River forced the company to seriously re-examine its future. It appeared that the methods of government open to Rupert's Land numbered four: 1) the retention of the status quo; 2) union with the United States; 3) union with the Canadas; or, 4) the creation of a Crown Colony.

The first alternative of maintaining the status quo was not possible by the mid 1850's. First, the monopoly control of the H.B.C. was gradu-

ually disintegrating. The free trade conflict and the Sayer trial were indicative of that. As the company began to lose its monopoly control, its financial returns decreased. Second, the market for beaver in Europe was depressed by the competition of silk hats. Third, as the St. Paul-Red River freight route became more established, the settlement was being drawn into the American economy. Finally, the British government was less willing to help the H.B.C. enforce its trading privileges.¹

Gradually company officials became convinced that the H.B.C. should sell its interests while there were still rights to sell.²

The company was also faced with the prospect of having to apply in 1859 for the renewal of its exclusive license to trade in the licensed territories (that area granted by the 1821 Crown Act that was outside of the chartered land). With growing anti-monopolistic sentiment in Great Britain the prospects of this re-newal by the British Parliament were not particularly good.

The second alternative of union with the United States seemed to be the most profitable and feasible to the inhabitants of Red River during the 1850's. The St. Paul-Red River freight route had established strong economic and geographic ties with the United States. Conversely, by 1860 there were 172,000 people in Minnesota (which had become a state in 1858)³ and the fertile agricultural lands of Red River were accessible and desirable to the Americans.

¹Galbraith, Imperial Factor, p. 312.

²Ibid., p. 332.

³Ibid.

As pointed out by Alan Artibise,⁴ the American Civil War brought the idea of union with the United States to an end. He states four reasons for this:

- 1) the outbreak of the war ended the flow of Americans into Red River and the "americanization" of the settlement;
- 2) Eastern capital which figured so prominently in the St. Paul-Red River trade route turned to financing the war;
- 3) the wartime armies situated on the international boundary made the British and Canadian governments extremely anxious and more willing to act in preventing American annexation; and,
- 4) the United States became less attractive to the inhabitants of Red River.

The third alternative of union with the Canadas became more attractive after the Civil War began. Prior to this there had been pressures from the Canadas for such a move. As early as the 1840's two Canadian newspapers, the *Globe* and the *North American*, had begun a campaign for the annexation of Rupert's Land. First, support for the proposals came from those Canadians who were interested in the agricultural possibilities of Rupert's Land, especially in the fertile belt (where Red River was situated). Second, Toronto businessmen envisaged the re-vitalization of the fur trade and the accompanying profits. Third, the Canadas feared the annexation of the H.B.C. land by the Americans. Fourth, Canadian railway interests began to pressure for annexation of H.B.C. territories when news of the Fraser River gold rush was received. These interests

⁴Alan Artibise, "The Crucial Decade: Red River at the Outbreak of the American Civil War," in the Historical and Scientific Society of Manitoba Transactions Series III, #23, (1966-67), p. 64.

and other Canadians demanded a more effective communications system than the one that was employed by the H.B.C. or that the company was willing to establish and maintain.

The fourth alternative was that Red River could become a Crown Colony. However, the Imperial Colonial Office of Great Britain was not willing to take over the responsibilities of government from the H.B.C.

During the 1860's the company was involved in negotiations with the British and Canadian governments, who were interested in establishing a new governing and economic structure for southern Rupert's Land, including the Red River Colony. The negotiations between the three parties covered the years of 1863 to 1869. The details of these are not within the scope of this discussion. Essentially, the British government wanted the H.B.C. territory opened to colonization but was not willing to pay the company for this right. The Canadian governments were interested in annexing Rupert's Land but felt that the British government should pay the company, as the Imperial government was responsible for the company's privileged position.

It is interesting to note that even at this late date, the British colonial secretary, based on advice from legal officers of the Crown, maintained that the 1670 Charter was legal and valid.

In June of 1865 the Colonial Office directed that the H.B.C. could only sell to the Canadians. This occurred at a time (after the Civil War) when there was renewed American interest in the company's territories. The people of Minnesota were anxious to expand northward and the American government was irritated by the use of the company's territories as a refuge by Indians at war with the United States.⁵

⁵Galbraith, Imperial Factor, p. 408

The Canadians were of course anxious to obtain control of the territory but remained reluctant to pay the H.B.C. The Colonial office was faced with working out a solution that would be acceptable both to the company and the Canadians. By the late 1860's the Canadians were willing to pay for the transfer of land because of the growing fear of American annexation. The British had also promised to underwrite a loan to the Canadians. The question of amount of payment remained.

Finally, in March of 1869, Lord Granville, Colonial Secretary, issued an ultimatum to the company and Canada. With reluctance on both sides, his basic terms were accepted:⁶

- 1) payment of 300,000 pounds to the H.B.C.; and,
- 2) reservation to the company of its posts and one-twentieth of the fertile belt.

The Canadian Parliament accepted the terms and set the day of transfer as December 1, 1869. Unfortunately, during these negotiations through most of the 1860's, the Indian and metis people of Red River had not been consulted. The revolt of the latter under Louis Riel was one consequence. However, an analysis of this is not within the scope of this discussion.

Basically the Hudson's Bay Company as a political institution came to an end because of anti-monopolistic pressures in Great Britain, both from members of Parliament and the general public. Public opinion was opposed to the privileged position of the company and consequently the Parliament of Great Britain refused to support the H.B.C. in the maintenance of its monopoly. In other words Parliament reflected the climate

⁶Ibid., p. 423.

of public opinion which was no longer supportive of maintaining the British empire through private company monopoly control. Conversely, the white settlers of Red River, even if they would have been sufficient in number to resist the Imperial government, were not, by the 1860's, supportive of the government of the H.B.C. Pressures and lack of support from Great Britain and corresponding lack of support in the Red River Colony caused the end of the H.B.C. as a monopoly trade company and as a political institution.

CHAPTER V

SUMMARY AND CONCLUSIONS

Three main aspects regarding the exercise of political power by the H.B.C. have been examined. What political powers did the company have. How was this power exercised. Toward what end was it exercised. The purpose of the preceding discussion has been to answer these questions.

The basis for the exercise of power was the 1670 Charter and the position the company held in both England and North America.

First, the Charter provided varied and far-reaching powers to the company. Throughout its history of governing Red River the company justified its rights and privileges by referring to the Charter and defined its duties in the same manner.

The H.B.C. could establish forts, towns and colonies in Rupert's Land. It could provide for and police these settlements as it deemed necessary. The company constituted and executed laws (within the scope of English common law) that regulated all aspects of life of those who lived under its hegemony. Conditions of work, freedom of travel, availability of educational facilities, access to goods (manufactured and agricultural) and services (roads and other means of communication), recourse to justice, and ability to influence the governing structure were all determined by the company within its granted territory. Furthermore, the H.B.C., under the provisions of the Charter, could call on the British government and military for aid in governing this territory. The power to declare and wage war was granted it. If had full access to the natural resources of Rupert's Land and freedom to exploit these. Under the provisions of the Charter the company had exclusive trade rights

and monopoly control over Rupert's Land.

Second, part of the company's success in maintaining monopoly control and exercising political power in North America was due to its economic advantages. This was over and above its legislated economic powers. That is to say it had economic advantages to back up its legislated powers to exclusive trade. In Rupert's Land the H.B.C. held advantages over its rivals in terms of guns and ammunition, rum from the West Indies, kettles, clothing and blankets. These were considered by the Indians to be of better quality than those offered by the Northwest Company. In addition, the H.B.C. was able to pay higher prices for beaver. The economic power held by the company was enormous considering the dependence of the native peoples on the goods of trade from Great Britain.

Third, the basis for the exercise of political power was strengthened by the political advantages the company enjoyed in Great Britain stemming from the composition of its governing authority.

Initially those individuals who held the position of Governor and Committee members were nobility and courtiers. Later, until 1863, the governing authority was confined by practice to members of a few influential families in Great Britain. In many cases these individuals were members of the Board of Trade or active in the Colonial Office. If not members they had close connections or at least the sympathies of those who were. For instance, when Polk was elected President of the United States on a platform that included an annexationist policy, Sir George Simpson and Governor Pelly were in close consultation with Sir Robert Peel. The H.B.C. executive was able to arrange the deployment of British troops to Red River.

In summary, the basis of the exercise of political power by the H.B.C. in Red River was the 1) 1670 Charter; 2) the economic advantages enjoyed by the company in Rupert's Land, including Red River; and, 3) the connections of the governing authority in London.

The methods of exercising that political power in Red River involved essentially two factors. One, the London Governor and Committee were the sole decision makers. Two, they established and maintained the formal political structure in Rupert's Land through which their decisions were executed.

In Red River Colony there was a Governor and Council. Together they constituted the legislative, executive, and judicial body of Red River but only in the capacity of administering policies formulated in London. The Governor and Council were always responsible to London.

The formal political structure between the Red River governors and the London decision makers varied from 1811 to the 1850's. The supreme authority in Rupert's Land was either the Superintendent of the Northern (or Southern) Department or, especially during the time of George Simpson, the Governor-in-Chief. Whoever he was, he was still responsible to the London authority and received his directives from it.

Ostensibly, the method of exercising political power by the company was by directive to company officers in Rupert's Land from the London Governor and Committee. This was the route of policy decisions through the formal structure.

However, the exercise of that power was of course more complicated than having directives issued in London and obeyed (or disobeyed) in Red River. The important component of exercising political power by any institution is the ability to punish. The H.B.C. had this authority and

ability.

In judicial matters the company arrested people, imposed fines and jail sentences (one grant specified by the company to Selkirk was the promise to pay for a court room and a jail), searched homes, and censored mail. Furthermore, if H.B.C. regulations were not obeyed the company threatened to deport inhabitants of Red River.

In economic matters, the H.B.C. could also punish those it deemed necessary. It could seize goods, regulate amounts of money available, revoke licenses to trade, and withhold credit.

In both the judicial and economic spheres the H.B.C. punished both employees and non-employees of the company. Employees, settlers and families, metis, and Indians were subject to H.B.C. law. Usually action was taken on the basis of a company law which had been provided for by the Charter or by succeeding legislation. Sometimes, as in the case where goods were seized or deportation threatened, the punishment was the act of some company official acting outside of law legislated by the company.

Despite the fact that H.B.C. law and accompanying punishments were applicable to all those who lived under company hegemony, access to influence the decision makers was not. The government of Red River was non-representative and non-responsible. Throughout the history of the company in Red River the London governing authority maintained a centralized power structure.

Non-employees had no access to the London authority. Moreover, neither did most of the employees with the exception of some company officers.

The reason for exercising political power remained unchanged from

the inception of the company to the end of the H.B.C. as a political institution. The company's primary purpose of 1670 was the establishment and maintenance of monopoly trade and commercial gain. Despite the development of a more elaborate formal structure and more complex social and economic circumstances in Red River between 1811 and the early 1850's the company's reason for governing the settlement remained the same. The exercise of power by the company in Red River was ultimately oriented toward maintaining or increasing company profits. If we define a political institution as having the authority and ability to constitute and to execute laws, and to punish those who do not obey these laws, then the H.B.C. was a political institution.

The H.B.C. constituted laws that governed Rupert's Land. Based upon the provisions of the Charter the company established the formal governing structure of its territory. The London authority decided that Governors and Councils should govern Red River and that sheriffs and constables should be appointed. The governors of Rupert's Land were either the superintendents of the departments or the Governor-in-Chief, depending upon the company's needs at any particular time. The London authority defined, by resolutions in the Court General or the Committee, the functions of those positions it had created. For instance, the Governor of Red River could carry out certain duties of a non-judicial nature, and he, along with members of the Council, could carry out judicial matters. The company defined the function of all those governing officials of Rupert's Land. In short the company established the structures of government of Rupert's Land and the functions of these structures.

Company laws determined that free trade was illegal; that only

certain kinds of communities could be established (e.g., Red River was an agricultural-settlement, and other posts were fur-trade communities) and where they could be established; who could immigrate to and live in these communities; who should be deported; which churchmen could establish churches; who owned land; and who could be a farmer (the Scottish were encouraged to emigrate and settle as the agricultural people of the community as company men were not to be concerned with agriculture), a fisherman (no one except some company men as the H.B.C. did not want industries other than the fur trade developing), or a trapper (those with licenses from the company). Company laws specified the kinds and numbers of educational facilities available (Simpson at one point denied that metis and Indian children should be able to learn to read and write); the kinds of goods available for consumption (e.g., rum) and the import duties paid on them (e.g., stoves manufactured in the United States); and who should have access to the natural resources (minerals, furs, and waterways were the private property of the company to develop as it thought best). Finally, the company could conscript men (Semple employed this authority at Seven Oaks) and declare and wage war against any non-Christian prince or people.

In addition to constituting and executing laws governing Rupert's Land, the H.B.C. had the authority (as granted by the Crown in 1607 and the Imperial Act of 1821; and by succeeding legislation constituted by its London authority) to punish those who did not obey its laws. Miles Macdonnell seized pemmican and furs belonging to the Northwest Company, John Clarke arrested free traders, and Adam Thom imposed fines and imprisoned people (he also executed an Indian but this action was outside of company law as all sentences imposing capital punishment had to be

approved (authorized) by the Crown). The Sayer trial was also indicative of the company's authority to punish those who broke its laws. By 1849 the ability of the H.B.C. to impose a sentence on Sayer who was one of the many metis involved in free trade had weakened. Nevertheless, prior to the disintegration of the company's monopoly the company had both the authority and the ability to punish wrongdoers, and it did so.

Assuming then that the definition of a political institution as one that has the authority and the ability to legislate and execute laws, and to punish those who disobey them, the H.B.C. was indeed a political institution.

An important aspect of the political history of Canada, especially of Western Canada, was that the H.B.C. was a political institution as well as a commercial one. The H.B.C. played an increasing political role, from the late 1600's onwards, in the first two hundred years of the development (both in terms of exploration and settlement) by Europeans of Western Canada. Outside of the aboriginal political patterns, the political structure of the H.B.C. was the central influence in the political development of Western Canada. It is important to understand that in the west political history begins with the H.B.C. The first settlement in the west took place under company hegemony. Its rules, its organization, its purpose was the basis of the settlement. In studying the political history of Canada perhaps we should be more aware of this aspect of Western Canadian history.

Too often students of Canada are presented with the period immediately preceding Confederation as the beginning point for the study of the country's political history. Only incidentally is the west even mentioned prior to this time, and usually only in consideration of some

explorers. The point here is that western Canada has a long political history prior to 1867, and that history evolves around an understanding of the H.B.C. as a political institution.

The end of the H.B.C. as a political institution brought about a totally new government authority. When Red River became part of Canada there was not only a new authority but a different kind of authority governing the settlement. Whereas the purpose of the H.B.C. had been the fur trade and commercial gain with the accompanying antagonism to settlement and development, the Canadian government was concerned with establishing a new nation and strongly encouraging settlement, engaging in immigration schemes, improving communications, and generally encouraging full scale agricultural development. In short, the governing authority of Western Canada changed from a commercial company to the structure required by a nation state. The former was based on the concept of commercial gain for a few people. The latter was based on the concept of representative and responsible government.

The understanding of the H.B.C. as a political institution is also important in terms of understanding the history of the native peoples of Canada. The first experience of the Indians with European civilization was through the H.B.C. For almost two hundred years the Indian was influenced by the company in all aspects of his life. Seven generations of people lived in the territory under company hegemony. Their concepts of society, law, and life styles were influenced by the governing institution, the H.B.C.

The metis of course started with H.B.C. law (or Northwest Company law). They had no tradition of their own. The H.B.C. constituted and executed the laws that governed the metis.

Another important factor in the political history of Western Canada was that, as a political institution, the H.B.C. firmly established English common law as the basis of government for the west.

Finally, of course, the H.B.C. was instrumental in maintaining the international boundary between the U.S. and Canada. Great Britain was concerned with maintaining the land granted the company as part of the British empire. To this end it supported the H.B.C. in its attempts to preserve control over the land and to maintain its trade monopoly over the area.

In view of the power and the influence the company had on the people who were indigenous to the area and those who came later (the metis and the whites); and in view of the precedents it established in terms of government authority and law, the analysis of the H.B.C. as a political institution has important implications. The preceding discussion has pointed out some of these.

Perhaps, the foregoing analysis of the H.B.C. as a political institution might also be useful for a more detailed examination of some political questions as it presents an over-view of the political history of the H.B.C. and of part of Western Canada. There are many details which deserve more intensive study. Unfortunately, a full investigation of these questions must wait until the H.B.C. archives are established in Winnipeg and fully opened to scholars.

Some of the political questions which deserve more detailed investigation are:

- 1) the nature of the proceedings of criminal cases tried by the H.B.C. general Court in Red River, and the reactions of the native people and whites to them;

2) the attempts by settlers to develop a more representative government under company authority;

3) the deliberations within the company and also in Canada concerning the more sophisticated forms of government that were possible at the end of H.B.C. rule;

4) the issues and resolution of those issues in the British Parliament concerning the legal and/or the proper scope of H.B.C. power;

5) the informal kinds of authority that developed under company government; and,

6) the results of Fort Victoria becoming a Crown Colony and a comparison of this development on the west coast with the government of Red River and its union with Canada.

Answers to these questions would constitute an entire new body of knowledge concerning Western Canadian political history.

This thesis has analyzed the H.B.C. as a political institution and laid the groundwork for a more detailed examination of the questions posed above.

The H.B.C. had governed Western Canada by an organization that was essentially primitive in its formal political structure, and centralized with no separation of government functions. The company was based on the concept of gain for a few people and to this end it maintained a strong authoritarian government. When the H.B.C. as a political institution ended it was replaced by a nation state based on the concepts of division of power along federal lines, and of a representative, responsible government. The H.B.C. was the political institution of Western Canada for almost two centuries and the history of Western Canada evolved around the political history of the company. For this reason the analysis

of the exercise of political power by the H.B.C. and the structures through which this power was exercised is vital to understanding Western Canadian political history prior to Confederation.

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